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The Solicitors' Journal

(ESTABLISHED 1857.)

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Current Topics.

Summons instead of Charge.

A SUGGESTION made by the magistrate in dealing with the *Sir Leo Money Case*, was that not every case should, as a matter of course, be brought before the police court merely because a constable is of opinion that an offence has been committed, but that a higher police authority should decide whether upon the evidence available there should or should not be a prosecution. An evening journal, in commenting upon this suggestion, quoted the alleged opinion of "a police official" that such a change of procedure would involve an alteration in the law. This, of course, is not so. In fact all of the Summary Jurisdiction Acts are based on the assumption that the issue of summonses or warrants upon information constitute the normal method of initiating a prosecution in a police court. The assumption is indeed wide, but it is so far valid, that any person charged is entitled to demand the laying of an information, with the consequent necessary adjournment. There is, as usual, something to be said for, and something against, the proposed change. It would eliminate cases where from the insufficiency of the evidence, the failure to obtain corroboration when it was available, or other reason, a conviction would be unlikely, but a certain fear might arise in the public mind of possible favour to avoid scandal in the case of well-known men. There are other cases where the latter consideration does not arise, and it is a hardship that a carman whose horse happens to have fallen lame or to have some small sore which renders it unfit to work should be haled through the streets in custody, when a verifiable name and address is at once forthcoming, and a prosecution will result in a caution or a small fine. The whole question of immediate arrest or subsequent process should be considered upon the present opportunity.

Absolute Professional Privilege.

IN THE case of *More* v. *Weaver*, 72 SOL. J. 319, SWIFT, J., had occasion to decide a specific point left open by Lord BOWEN in his judgment in *Browne* v. *Dunn*, 1893, 6 Rep. 67 (a House of Lords case). There the defendant, a solicitor, prepared an authority to himself, for the signature of various persons, for him to act for them in proceedings against the plaintiff, who considered that certain words in the document constituted a libel on himself. It was held that the occasion was privileged, and that there was no evidence of malice. Lord BOWEN, however, intimated that in his opinion, though it was not then necessary so to decide, that there was absolute privilege in all communications between solicitor and client relevant to proceedings contemplated or taken. In *Morgan* v. *Wallis*, 1917, 33 T.L.R. 495, DARLING, J., decided, at least so far as a bill of costs was concerned, that the privilege was not absolute, and, to that extent, declined to follow the dictum of Lord BOWEN. In "Fraser on Libel," 6th ed., p. 190, note (*a*), the view of Lord BOWEN is preferred, and SWIFT, J., has now followed Lord BOWEN's dictum in respect of a letter written by the client to her solicitor, though he also held that there was in fact no malice, so the point may technically remain open. It seems extremely unlikely, however, that such a weight of opinion will be disregarded hereafter, and, if that opinion is followed, the claim of absolute privilege will, be established from the client's preliminary letter to his or her solicitor, through the subsequent correspondence and statements on proof of witnesses (*Watson* v. *M'Ewan*, 1903, A.C. 480) to the whole of the proceedings on trial. The question of a bill of costs may perhaps be more open, but if it is not directly a document containing statements relevant to the administration of justice, it is so indirectly, for it is one which the law requires a solicitor to deliver to his client to explain his charges, and therefore one essential in the ordinary course of litigation.

Signature by Surviving Justices of Case Stated.

AN IMPORTANT question as to whether a divisional court had jurisdiction to hear a case stated by justices, where it was signed by two only of the three justices who had originally heard it, one having died after the hearing but before the signing of the case, was determined in *Marsland* v. *Taggart*, 1928, W.N. 128. The point would appear to turn on the correct interpretation of s. 2 of the Summary Jurisdiction Act, 1857, which provides, *inter alia*, that "after the hearing and determination by a justice or justices of the peace of any information or complaint . . . either party to the proceeding before the said justice or justices may, if dissatisfied with the said determination as being erroneous in point of law, apply in writing . . . to the said justice or justices to state and sign a case . . ." The Act, it will be observed, requires the application to be made to the same justices who determined the information or complaint, and requires the same justices to state and sign the case. It has accordingly been held in *Barker* v. *Hodgson*, 68 J.P. 310, that the case must be signed by all the justices who heard and determined the information or complaint, including also those justices who may have dissented from the decision given. Where, however, the case cannot be signed by all the justices who heard the information or complaint, by reason of the death of one or more of them before the signature of the case, the position would seem to be different, and the absence of such signatures must of necessity be excused. This, at any rate, was the view taken by the Irish courts in *Keen* v. *Robinson*, 1910, 2 Ir. R. 306, in which case it was held that there was jurisdiction to hear a case stated by the one surviving justice. This view was adopted by the divisional court in *Marsland* v.

Taggart, the court accordingly holding that it had jurisdiction to hear the case in the circumstances. In arriving at this decision the court appears to have acted on two well-known principles, viz., *Actus dei nemini injuriam facit;* and *Lex non cogit ad impossibilia*. At the same time, however, it is interesting to speculate as to what would be the correct procedure in the event of all the justices who determined the matter dying in the interval before the case was stated or signed.

Inalienable Portions.

With reference to the letter of Mrs. Hubback, printed on another page of this issue, perhaps we may remind our readers that we dealt with the matters she raises at some length in an article under the title "Inalienable Family Rights in Property," which appeared on 26th December, 1925 (Vol. 70, p. 236). Reference was there made to the French and German codes, and also to the laws of various American states, which, starting from our system, have modified it in favour of surviving children or spouses. Lord Astor's motion refers, not to foreign laws, but to those of Scotland, Australia and other portions of the Empire. In *Allardice* v. *Allardice*, 1911, A.C. 730, there was an interesting appeal to the Privy Council involving the application of the New Zealand Family Protection Act (No. 60 of 1908, the codifying year), Pt. II, s. 33 (1). The Act of 1908 in fact consolidated the Family Homes Protection Act, 1895, and the Testator's Family Maintenance Act, 1906, so that the modification of our own law is of more than thirty years' standing. The Act provided that, where any person should die leaving a will which failed to provide proper maintenance for surviving spouse or child, the court might order such maintenance to be secured out of the estate. The rules laid down in the cases decided under it could be summarised as follows: (1) That it was something more than to extend the provisions of a previous Destitute Persons Act; (2) that it did not empower the court to make a new will for the testator; (3) that it was only applicable to alter the will to provide for proper maintenance where adequate provision had not been made; (4) that the court would more amply provide for surviving spouses than for children if the latter were able-bodied. A similar piece of legislation may be found in the laws of Victoria. Perhaps the criticism may be made that, although such laws arrive at the same result as the Continental and Scottish systems, namely justice to those who are unjustly disinherited, the New Zealand and Victorian systems place a much greater burden of responsibility on the courts, which have to exercise their discretion, instead of merely enforcing a hard and fast law, such as that of the *jus relictæ* or *legitim*. But this alternative might well be more generally acceptable than any hard and fast scheme imposing a direct restriction on the power of disposition by will. Further, the number of "hard cases" must be comparatively very small, so that it would scarcely be worth while to introduce complication into our present general system. An enactment specially framed to meet the "hard cases" only would seem quite sufficient. It may at least be hoped that the debate in the House of Lords will throw some light on the best way of approaching the problem.

The Dock.

If the Deputy Chairman of the Middlesex Sessions is correctly reported in the daily press he seems to be under the impression that some bureaucratic authority unnamed has decreed that no juvenile shall be placed in the dock. So far as we know no such order has been given or could be enforced. Whether a prisoner shall or shall not stand in the dock is entirely a matter for the judge before whom he appears. There is a great deal of misconception about the use of the dock. It is, in fact, merely a device for the restraint of a possibly violent prisoner. There is no law upon the subject at all, and there is no fixed practice. In these days of gentler manners very few prisoners need any restraint in court. In many courts the dock is, even from his own point of view, the most convenient place for the prisoner to be, though in a way it shows him already set apart from his fellow men, and so may raise some prejudice against him. In courts of summary jurisdiction great confusion prevails. In some, persons charged on arrest are put into the dock, those summoned in front of it. The seriousness of the alleged offence is the criterion in other places. It is time the practice was rationalised, but we have not seen any signs of the supposed conflict "between public feeling and bureaucracy" in this matter. "The boy," says *The Times*, "remained outside the dock," an upshot no one need deplore.

Preservation of Foxes.

At Upton-on-Severn Petty Sessions a landowner was recently charged under the Protection of Animals Act, 1911, s. 8, with unlawfully placing upon her land edible matter which had been rendered poisonous, without having taken all reasonable precautions to prevent injury thereby to dogs, cats, fowls and other domestic animals and wild birds. The latter precautions, if proved to have been taken, are a good defence under the Protection of Animals (Amendment) Act, 1927, s. 1. The maximum penalty under the original section is £10. For the prosecution evidence was given by the Hon. C. J. Coventry of the finding of dead rooks, which appeared to have been poisoned. Major Taylor, Joint Master of the Croome Hunt, also gave evidence as to the rooks, and admitted in cross-examination that, after many conversations and much correspondence, he had never been able to agree with the defendant with regard to foxes. The County Analyst deposed that he found strychnine in the stomach of a fox, in the crop of the rooks, and also in portions of cats. The defendant had explained to a police inspector that she took all precautions by placing a dead fowl, treated with strychnine, into an empty pen after dark, when the poultry and cats were shut up. She did not set steel traps, because of the cruelty, and did not shoot. The defendant's case was that there was no evidence of laying poison without due care, and that the fox must have jumped over or broken through the fence. The chairman (Colonel Symonds Hooper) stated that the Bench considered that proper precautions were not taken, and defendant was fined two guineas and £12 13s. 6d. costs.

The Paignton Cemetery Case.

The remarkable claim of the daughter of a deceased woman buried in a vault at Paignton Cemetery to conduct certain quasi-sacrificial rights in it has had the fate, which can hardly surprise the profession in view of the authority of *McGough* v. *The Lancaster Burial Board*, 1888, 21 Q.B.D. 324, of being dismissed with costs. It is true the case of *McGough* was decided under sections in the Burial Act, 1852, whereas the present one involved corresponding provisions in the Cemeteries Clauses Act, 1847, but the same principle was applied in both. The essence of it was that the rights conferred by the conveyance in the usual form under either Act were not those passing on an ordinary conveyance of a freehold, but the rights of burial and erection of monument, etc., in the nature of easements, which alone the statutory authority was empowered to grant. In *Ashby* v. *Harris*, 1868, L.R., 3 C.P. 523, it is true that the respondent successfully established the right not only to erect a tombstone, but to plant a grave with shrubs and flowers and keep them trimmed and in order. This authority, however, without expressly being over-ruled in the *McGough Case*, was doubted by Lindley and Bowen, L.JJ. The ruling in the *McGough Case* was that the plaintiff was not entitled to place a glass shade with a wire frame on a grave. In some cemeteries there appear to be regulations forbidding artificial wreaths altogether. One forbidding natural wreaths and flowers might be held unreasonable, and it certainly would

be difficult to enforce. In fact, the usual practice is that owners of graves are allowed to make arrangements with the cemetery keepers as to planting flowers on graves and maintaining them in order. The claim of the plaintiff in the *Paignton Case* was, however, of a very different character, and, having regard to the notoriety her visits acquired, and the possible disorder which might have followed, the course taken by the cemetery authority appeared to have been the only one dictated by their duty. The common law right of burial in a churchyard is discussed by BOWEN, L.J., in *McGough*, at pp. 327-328, and the right of control by the incumbent of an inscription on a tomb in *Breeks* v. *Woolfrey*, 1838, 1 Curt. 880, and *Keet* v. *Smith*, 1676, 1 P.D. 73. It might be an open question whether an incumbent could lawfully allow such rites in his churchyard as those practised by the plaintiff at Paignton.

The Plaintiff's Health in Breach of Promise.

IN A VERY recent action for breach of promise the defendant, while admitting the promise, pleaded that the delicacy of the plaintiff's health justified his repudiation of his promise. This defence was defeated by the jury's finding that the plaintiff was at all material times fit to marry. The judge laid down, however, that although a plaintiff's concealment of her serious illness, or even the defendant's ignorance of it, might justify breach, yet, if the promise was made with full knowledge, it was the defendant's duty to keep it. The question as to how far the illness of plaintiff or defendant will excuse non-performance of a promise to marry has, of course, been at issue in several decided cases. In *Hall* v. *Wright*, 1858, E. B. & E. 746, the defendant pleaded his own ill-health—apparently hæmorrhage of the lungs—but it did not avail him. The case, however, which was decided on appeal from the Exchequer Chamber, showed a great conflict of judicial opinion, and in *Cavell* v. *Prince*, 1866, 4 H. & C. 368, POLLOCK, C.B., expressly disapproved it. In *Jefferson* v. *Paskell*, 1916, 1 K.B. 57, the plaintiff's health was in issue. There she was admittedly unfit to marry through ill-health on the day fixed for the marriage, but was well two or three months later. The court held that, in the circumstances, her ill-health did not release the promise, but placed a burden on her to prove that she was well enough to marry within a reasonable time. It was also held that defendant's honest belief that the plaintiff was not in a fit state to marry did not justify repudiation if the belief was not well-founded. The degree of ill-health which would justify repudiation and the general implications or warranties of a promise to marry are left somewhat clouded by the above authorities. As MCCARDIE, J., put it in his own striking way in *Cohen* v. *Sellar*, 1926, 1 K.B. 536, at p. 544 : "The law of breach of promise grew at a period when the principles of eugenics were scarcely known, and when the lamp of sociological science had not been lit."

Damage to Street Lamps.

IN "Our County Court Letter" of 3rd December last (71 SOL. J. 929), the subject of damage to lamp-posts was considered and the relevant cases which had come before the courts were dealt with. Since that article appeared a case has been decided in Scotland—*Hogg* v. *Macpherson*, 1928, S.L.T. 35—to which attention may usefully be called, as it forms an interesting addition to the previous decisions on the subject. In Scotland the governing statutory provision is s. 128 of the General Police and Improvement (Scotland) Act, 1862, which imposes liability upon any person who shall "through negligence or accident break any lamp set up in any street," words which, it will be observed, are substantially the same as those contained in the Gasworks Clauses Act, 1847. In the Scottish case the facts were that a horse van while in charge of a driver was capsized in a gale of wind of exceptional severity, and, striking a gas lamp, damaged it. The driver was charged with having, "through accident," broken the lamp, and the magistrate found him liable for the amount of the damage, but stated a case for the opinion of the court on the question whether he was right in so holding. Among other authorities cited on behalf of the appellant was *Postmaster-General* v. *Beck & Pollitzer*, 1924, 2 K.B. 308—a case relating to damage caused to a fire alarm post—where SCRUTTON, L.J., reserved his opinion on the question of liability where the damage has been caused, not by any direct act of the servant in charge of the vehicle colliding with the post, but by reason of *force majeure*, founding himself on the well-known and much discussed case of *River Wear Commissioners* v. *Adamson*, 1877, 2 App. Cas. 743. Probably owing to this expression of opinion the Scottish Court held that, in the circumstances mentioned, the driver was not liable. In his judgment the Lord Justice-General said : "It seems to me as plain as can be from the circumstances of the case that the breaking of the lamp was not the appellant's act at all, either negligent or accidental, and that, accordingly, upon the facts found proved there was no justification for the award made." Probably most people would sympathise with this conclusion, which appears to be good sense and equally sound as a matter of justice. But since SCRUTTON, L.J., reserved his opinion on the question of liability in case of damage through *force majeure*, a serious modification appears to have been put upon the decision in *River Wear Commissioners* v. *Adamson*, *supra*, by the House of Lords in *The Mostyn*, 1928, A.C. 57. True it is that as *Adamson's Case* has been variously interpreted, so it is not altogether easy to say what is the precise effect of *The Mostyn*, but it seems that now, under s. 74 of the Harbours, Docks and Piers Clauses Act, 1847, the liability of the owner of a vessel which has caused damage to harbour works depends upon whether or not he, either by himself or by his servants, was in control of the vessel at the material time. If he was in charge, he is liable, notwithstanding the absence of negligence. If this principle is to be imported into the street lamp cases it would seem that even though damage has been caused through *force majeure*, the driver would be held to be liable if he was in control of the vehicle at the time the damage was caused. The point will doubtless come up for consideration some day.

Assault by Kissing a Wife.

TO FIND, in these latter days, a husband who considered himself entitled at all times to kiss his wife, whether she welcomed the osculation or not, a little surprised a Divisional Court, who recently, on a case stated by justices, had to deal with the proposition that the relation of husband and wife was a defence in law to a charge of assault by forcing a kiss on a woman against her will. The justices had bound the husband over to be of good behaviour and the High Court upheld their decision. Husbands' supposed rights have been steadily diminishing since the celebrated Mr. JACKSON, in 1891, carried his wife off with her feet sticking out of the carriage window, and found that the courts would not let him personally enforce a decree he had obtained for restitution of conjugal rights. It is old law that the courts will not seek to enforce marital intercourse, though its unreasonable refusal may operate as reasonable cause for leaving, which would otherwise be desertion. It is said on the authority of HALE that a man cannot commit rape upon his own wife, the reason being that she gives an irrevocable consent when she marries, but STEPHEN was of opinion that an indictment for an indecent assault would lie for violence when the wife refused to permit intercourse in circumstances where decency or health justified her in refusal. In these days it would be generally conceded that women have a legal right to the possession and management of their own bodies, subject to a reasonable construction of the marriage contract, and that even breaches of that contract cannot lawfully be met by violence ; and the modern ethical code as to the relations of the sexes in marriage equally forbids compulsion of any kind, in spite of the hysterical reaction by some lady novelists in favour of the "he-man" or the "cave-man" as he is variously called.

Poor Man's Lawyers.

THE conference on legal aid for the poor, convened by the London Council of Social Service (reported at p. 306, *ante*), marks a step forward in valuable social work, for undoubtedly many poor people are not only much hampered, but often suffer substantial injustice from inability to command legal aid in presenting their case to the court.

Through the agency of "poor man's lawyers," such persons are able to get legal advice, and, under the Poor Persons Rules, they can get gratuitous legal aid in actions in the High Court. But the gap left is great, for the poor man's courts are the county courts and the police courts, and in a proportion of cases court advocacy is essential.

The conference was unanimous that, at least at present, no attempt could be made to deal with criminal cases. It is, indeed, inadvisable that such work should be undertaken gratuitously by solicitors and counsel. That service should be a State service, a claim recognised in the inadequate Poor Prisoners' Defence Act, 1903.

But the county courts, although originally conceived as courts for the recovery of small debts, deal with matters of great importance and complexity, and the time has come when this should be recognised, and the poor litigant receive the aid without which his right to resort to the courts is an empty one. As to the police courts one has only to instance the matrimonial jurisdiction of justices to realise how important it is that persons unable to afford legal aid should have such assistance placed at their disposal without cost.

Too often a court of summary jurisdiction is left, without the help of counsel or solicitor, to extract the facts from both sides, neither complainant nor defendant having any idea of how to present evidence or what particular facts are relevant. When some more or less defective outline of the facts has been obtained, a peculiarly difficult body of law, embodied in cases going back to the days of the old ecclesiastical courts, has to be applied to them. The result is that sometimes the litigant gets neither law nor justice.

Other difficult civil work involving the rights of landlord and tenant, master and servant, parent and child, has to be performed by the same tribunal, working largely in the dark as to the essential facts and with a library of books which is, too often, beneath contempt. The evil is one which cries aloud for early remedy, and the London Council for Social Service, by taking the initiative, has done well. If the start made is followed up, the result, it is to be hoped, will be the remedy applied.

To judge by what the speakers had to say, the Legal Aid Committee is thoroughly aware of every aspect of the problem, including the need of preventing the philanthropic efforts of their helpers being exploited by persons who pose as poor while well able to pay for their professional assistance.

The work will need money, for it is proposed to have a central office with a whole-time paid solicitor, and a lay almoner who would interview applicants and make the necessary inquiries into their financial position.

One good result of a full development of the Committee's plan may be to get rid of what our American friends call "ambulance chasers," the unscrupulous practitioners who take advantage of street accidents to recover money in the name, but only to a small extent for the benefit, of the injured.

It should be added that the activities contemplated are in no sense in substitution for the excellent work done by the Poor Persons Department of The Law Society, which spends every penny of its by no means lavish government grant on its work. The highest praise is due for that work; the promoters of the new scheme are, by seeking to extend it to other fields, paying it the sincerest form of compliment. We say this lest the comparison between the expenditure of The Law Society and that of the Society of Our Lady of Good Counsel, briefly reported as it was, should be misapprehended as, in any sense, an adverse criticism of the former.

Speculative Transactions.

THE "Francs Case" (*Ironmonger & Co.* v. *Dyne*) had a sequel in a bankruptcy appeal in *In Re a Bankruptcy Notice*, when the important question was considered by the Court of Appeal whether the speculative transactions which had been carried on by Mrs. DYNE amounted to the carrying on of a trade or business so as to make her liable to be served with a bankruptcy notice under s. 125 (2) of the Bankruptcy Act, 1914.

That sub-section provides that "where a married woman carries on a trade or business and a final judgment or order for any amount has been obtained against her . . . that judgment or order shall be available for bankruptcy proceedings against her by a bankruptcy notice . . ."

To give any adequate definition of what amounts to a "trade or business" would appear to be well-nigh impossible. Thus, in *Erichsen* v. *Last*, 1881, 8 Q.B.D. 414, JESSEL, M.R., said: "There are a multitude of things which together make up the carrying on of a trade, but I know of no one distinguishing incident, for it is a compound fact made up of a variety of things" (at p. 416).

The expression "business" is not necessarily the same as "trade," since it has been held that while every trade is a business every business is not necessarily a trade, and where the expression "business" is used together with the expression "trade" the operations which will be included therein (i.e., the expression "trade or business") will be much wider than would be the case if the expression "trade" alone were employed.

Thus, in *Re a Debtor*, 1927, 1 Ch. 97, Lord HANWORTH, M.R., said: "It is clear from a consideration of the cases that the addition of the word 'business' has added much to the scope of the word 'trade' when used alone. In *Smith* v. *Anderson*, 15 Ch. D. 247, 259, Jessel, M.R., said: 'It is unnecessary to refer to authorities to show that "business" has a more extensive signification than "trade."' Again, in *Rolls* v. *Miller*, 27 Ch. D., 71, 85, Cotton, L.J., said: 'I cannot read the two words "trade" and "business" as synonymous.' It is clear, therefore, that the Legislature intended to add to the sphere of the responsibility of a married woman."

That speculative transactions might amount to the carrying on of a trade or business was definitely decided by the Court of Appeal in *Cooper* v. *Stubbs*, 69 SOL. J. 743; 1925, 2 K.B. 753, in which case it was held that a member of a firm of cotton brokers who entered privately and independently of his own firm into future delivery contracts of cotton, with no intention of taking actual delivery or of using them as "hedges" for actual transactions in order to safeguard his position, was carrying on a trade within the meaning of Sched. D, para. 1 (*a*) (ii) of the Income Tax Act, 1918. It is important to note, however, that while these transactions may have been speculative from the point of view of the person entering into them, they were nevertheless real transactions. Thus POLLOCK, M.R. (as he then was), said in *Cooper* v. *Stubbs*, 1925, 2 K.B., at p. 763: "There is no distinction between contracts which are used for the purpose of speculative dealings and contracts which are made for the real purpose of securing the sale or purchase of stock or cotton. The appellant himself carried on the trade of cotton broker and had entered into a number of these real transactions . . . It may be that they were speculative in the sense that they were for his own purpose a speculation. It may be that in a loose and colloquial sense of the word they were gambling transactions and that it may be said that he was gambling in making these contracts, but the purpose for which he made them did not alter the character or nature of the contracts that he did make: they were real transactions, although the purpose of them may have been in his mind in respect of all or some of them to fulfil his desire to gamble in speculative transactions."

These observations seem very appropriate to the facts in *Re a Bankruptcy Notice, supra*, where the transactions, although speculative, were nevertheless real business transactions extending moreover over a long period of time, so that the decision of the Court of Appeal in that case, particularly in view of the previous authorities, to the effect that a trade or business was being carried on, would appear to be well founded.

Wife's Right to Maintenance.

An important point affecting the right of a wife to claim maintenance from her husband after a dissolution of the marriage, notwithstanding a covenant on her part contained in a deed of separation, to the effect that she would not thereafter commence or prosecute any action or other proceeding for compelling the husband to allow her any support maintenance or alimony was decided by the learned President in *H.L.G.* v. *H.G.E.*

The validity and effect of such a covenant will depend to a large extent on the object with which it has been entered into. If the object therefore is to free the husband from liability to support the wife in the event of adultery being committed by the husband, and the marriage being dissolved as a result thereof, it would seem clear that such a covenant would be void as against public policy, and would be strong evidence of collusion in the legal sense if any adultery supervened thereon.

Further, such a covenant would clearly cease to be effective, if there was a clause in the separation deed providing that the deed should terminate in the event of the marriage being dissolved.

In the above-mentioned case of *H.L.G.* v. *H.G.E.*, the deed did not contain any such cesser clause, nor could it be said that it was void on the ground of public policy, since it was not made in contemplation of any proceedings for adultery, but by way of compromise of a suit for divorce a *mensâ et thoro* brought in Ireland where the parties were domiciled at the time.

It was not on any such ground therefore, that it was open to the court to hold that the deed had ceased to be operative so that the wife's right to sue the husband for maintenance was to be regarded as having revived. In holding, however, that the wife was entitled to take proceedings for maintenance against her husband the Court did in fact hold that the covenant had ceased to be operative, though for other reasons. The *ratio decidendi* of this case, it seems, is to be found in the following passage in the judgment of the learned President. Thus the learned President said: "The appellant had covenanted, *as a wife*, against making any claim, *as a wife*, on her husband, *as a husband*, for support, maintenance or alimony; she was no longer a wife, but having been the wife of this respondent, she came to ascertain whether the court should deem it right that her sometime husband should make her some allowance." In other words, the covenant in question was to be regarded as being based on the essential condition that the status of the parties as married persons remained unchanged, so that the covenant ceased to be operative, on a change taking place in that status.

It would be useful to note with this decision the decision of the learned President in *Dewer Dewe: Snowdon* v. *Snowdon*, 44 T.L.R. 174, to the effect that a husband will not be relieved of his common law liability to support his wife, notwithstanding that he has been discharged, by reason of his bankruptcy, from his liability under a separation deed to maintain her, and that too,, whether or not she has proved in the bankruptcy for the capital value of weekly or other sums which the husband may have covenanted to pay under the deed.

A Conveyancer's Diary.

Power of Executors under Re-sealed Confirmation to sell Real Estate: *Re Howden and Hyslop*, 1928, W.N. 125.

An extremely useful decision was given by Astbury, J., in *Re Howden and Hyslop*, 1928, W.N. 125. The point raised (on a vendor and purchaser summons) was whether the re-sealing of a Scottish confirmation gave the executors power to deal with English real estate or whether the trust disposition, executed according to Scots law, had to be separately proved in England before the executors could make title to such real estate.

The Jud. Act, 1925, s. 168 (1), re-enacting the Confirmation of Executors (Scotland) Act, 1858, s. 12, provides that a confirmation of the executor of a person dying domiciled in Scotland, which includes besides the estate situated in Scotland *also personal estate situate in England*, shall be re-sealed "and shall, on being so sealed, have the like effect in England as if it were a grant made by the High Court."

The practice at the Probate Registry pursuant to these enactments has been to treat the re-sealing as constituting the executor's personal representatives in respect of personalty only. Accordingly, executors with a re-sealed confirmation could sell English leaseholds: *Hood* v. *Lord Barrington*, 1868, L.R. 6 Eq. 218, 222.

Further, the Probate Registry has hitherto acted on the view that a confirmation cannot be re-sealed if the only property in England consists of realty: "In such a case it is necessary, in order to deal with the English real estate, to take out a separate grant in England"; see Tristram & Coote's "Probate Practice," 16th edition, p. 302. Moreover, where a confirmation has been re-sealed and there is real estate in England, it has been the practice at the Probate Registry to make a grant to the executors as respects the realty only: *op. cit.*, p. 303.

In *Re Howden and Hyslop* the testator had left real and personal estate situated in England, and a Scottish confirmation had been re-sealed pursuant to Jud. A., 1925, s. 168 (1). The confirmed executors proposed to make title without first obtaining a separate grant as respects the realty in England. The opinion is expressed (without assigning a reason) in 1 K. & E., 12th edition, p. 459, note (*h*), that the executors could make a good title in such circumstances. This view was approved of and acted upon by Astbury, J. Indeed, the case seems to be well within the wide provisions of the Ad. of E.A., 1925, ss. 1, 2.

It might be argued that Ad. of E.A., 1925, s. 2 (1), authorises the re-sealing of a confirmation notwithstanding that the testator left no personal estate in England; the words "all enactments and rules of law and all jurisdiction of any court with respect . . . to probate . . . in the case of chattels real . . . shall have effect with respect to real estate vested in" the personal representative. But that argument might be taken to have been met by the express words "also personal estate in England" contained in the Jud. A., 1925, s. 168 (1): see *supra*; though these words were lifted from the 1858 Act, which was passed when real estate did not devolve upon the personal representative. It may well be that "probate" can be taken to include "re-sealing."

In any case, the immediate result of *Re Howden and Hyslop* is clear; Scottish executors, confirmed by a re-sealing in England, can make a good title to freeholds as well as leaseholds.

If in future the Probate Registry re-seal a confirmation, notwithstanding that the testator has left no personal estate in England, it would follow from L.P.A., 1925, s. 204, that a purchaser from executors so confirmed will be protected.

Settled Land: Death of Tenant for Life Intestate: Representation.

A correspondent inquires whether the decision in *Re Bridgett and Hayes*, 1928, 1 Ch. 163, covers a case where the tenant for life dies intestate and the land (the legal estate in which was vested in him as trustee estate owner) ceases to be settled (e.g., becomes subject to an immediate binding trust for sale) on his death. Though the exact wording of the Jud. A., 1925, s. 162, which applies in the above circumstances, is not quite the same as that of Ad. of E.A., 1925, s. 22 (1), there is no essential difference between the meaning of " settled land " in the two provisions. Accordingly, where a tenant for life of settled land dies intestate and the land ceases thereby to be settled land, a general grant of administration will be made.

Landlord and Tenant Notebook.

Recontrol of Part of Decontrolled Premises.

We had occasion to comment (*ante*, p. 291) on the somewhat startling decision of a Divisional Court in *Lloyd* v. *Cook*, 72 Sol. J. 319, where it was held that although a dwelling-house might be decontrolled a subsequent letting of a part thereof would nevertheless be controlled, the court adopting the view in that case that a decontrolled dwelling-house was only decontrolled as a whole but not as to any separate portion thereof.

According to this view of the law, therefore, when a house became decontrolled the landlord, in order to prevent the operation of the Acts, would have been obliged to re-let the house as a whole, and if he were to sub-let a portion or portions thereof separately such portion or portions would be subject to control in exactly the same way as they would have been previously to the date when the house as a whole became decontrolled; unless, of course, it could be shown that the particular portion constituted a separate dwelling-house in itself which had become decontrolled as such by reason of the landlord having entered into possession thereof at the material date (cf., for example, *Dunbar* v. *Smith*, 1926, 1 K.B. 360, where it was held that " if different parts of a building are let separately as dwelling-houses each of those parts, if the rent is within the statutory limits is a ' dwelling-house ' to which the principal Act applies within s. 2 (1) of the Rent and Mortgage Interest Restrictions Act, 1923, and that therefore if the landlord came into possession of any one of them that part would become decontrolled ").

Following close upon the decision of *Lloyd* v. *Cook*, *supra*, comes another decision of the Divisional Court (*Ratkinsky* v. *Jacobs*, *Times*, 2nd inst.), which is diametrically opposite to it. In the latter case, the Divisional Court had to consider the same point which was decided in *Lloyd* v. *Cook*, but after considering that case and other authorities the Divisional Court in *Ratkinsky* v. *Jacobs* refused to follow *Lloyd* v. *Cook* and held that where a dwelling-house is decontrolled every part thereof is necessarily decontrolled as well.

The Divisional Court in *Ratkinsky* v. *Jacobs* not only disapproved of *Lloyd* v. *Cook* quite independently of authority, but further based their judgment on the fact that the principle of *Lloyd* v. *Cook* conflicted with opinions expressed previously by the Court of Appeal.

It will be remembered that as far back as 1919 in the case of *King* v. *York*, 1919, 88 L.J. (K.B.) 839, the principle was clearly enunciated by Sankey, J., that the Rent Acts applied to things not to persons, and that they operated *in rem* and not *in personam*. That principle was affirmed and applied by the Court of Appeal in *Prout* v. *Hunter*, 1924, 2 K.B. 736 (cf. *ib.*, at p. 744), in which case the court held that where premises had been let unfurnished the protection hitherto enjoyed by the tenant would be lost if the premises were subsequently let furnished.

If one applies this principle to questions of decontrol it seems clear that if the Acts apply *in rem* and not *in personam*, then on the decontrol of a dwelling-house every part thereof must necessarily become decontrolled as well, so that a subsequent letting of a part separately would nevertheless be outside the protection of the Acts.

Lloyd v. *Cook* would therefore be in conflict with the above principle, while *Ratkinsky* v. *Jacobs* would be in entire accord with it.

Furthermore, *Lloyd* v. *Cook* appears to be in conflict with a previous decision of the Divisional Court in *Finey* v. *Gougoltz*, 1926, 2 K.B. 322, although the point in question was not raised expressly in the latter case. In *Finey* v. *Gougoltz* the defendant was the holder of a ninety-nine years' lease with several years unexpired residue, and was in occupation of the whole of the premises subsequently to the 31st July, 1923. Subsequently thereto, he sub-let a part thereof to the plaintiff. It was held that the defendant was the landlord and that the plaintiff was not entitled to the protection of the Acts. This decision is clearly in conflict with *Lloyd* v. *Cook*, since according to the principle of the latter decision the part sub-let to the sub-tenant would in any event have been controlled.

It is submitted, not only from the authorities, but from the common-sense point of view, that *Ratkinsky* v. *Jacobs* is to be preferred to *Lloyd* v. *Cook*, but in view of the divergence of opinion on this point, which is of far-reaching importance, it is to be hoped that a clear and definite ruling thereon will be given by the Court of Appeal in the near future.

Our County Court Letter.

SUCCESSIVE ACTIONS FOR SIMILAR CAUSES.

The danger of premature legal proceedings has been illustrated in *Conquer* v. *Boot*, 1928 W.N. 118, 165 L.T.J. 283. In 1926 the plaintiff had sued the same defendant upon a contract to build and complete a bungalow at Greenford in a good and workmanlike manner. The particulars of claim specified certain requirements in order to bring the bungalow up to contract standard, and judgment was given for the plaintiff for breach of contract. In 1927 the plaintiff again brought an action in reference to the same bungalow, but the particulars of breaches were different, and an allegation added that the defendant had failed to use proper materials. The defendant pleaded *res judicata*, but the county court judge at Brentford again gave judgment for the plaintiff. The Divisional Court (consisting of Lord Justice Sankey, sitting as additional judge, and Mr. Justice Talbot) reversed this decision. It was pointed out that damages resulting from the same cause of action must be recovered once for all. In this case there was an entire contract to complete the bungalow, and one promise to perform it at one time. The breach of the entire contract was the same, in form and substance, both in the first and second actions. Judgment was therefore given for the defendant.

The position with regard to running-down cases was defined in *Brunsden* v. *Humphrey*, 14 Q.B.D. 141, in which the facts were as follows: The plaintiff, while driving his cab, had a collision with a van driven by the defendant's servant, owing to the latter's negligence. The plaintiff sued in the county court for damage to his cab, and the defendant paid into court £4 3s. and 6s. costs, which the plaintiff accepted. The plaintiff later brought an action for personal injuries, in which the jury awarded him £350 damages. The Divisional Court, Baron Pollock and Mr. Justice Lopes, set the verdict aside, and entered judgment for the defendant, but the Court of Appeal held that the action was maintainable. Lord Esher (then Sir W. B. Brett), M.R., stated that the collision did not give rise to only one cause of action, as the plaintiff

sustained bodily injuries, and was entitled to sue for a cause of action distinct from that for the damage to his goods. One test was whether the same evidence would prove the plaintiff's case in both actions, and in the county court action evidence of damage to the cab would have been necessary, whereas in the High Court action medical evidence was required. Lord Justice BOWEN concurred. Lord COLERIDGE, C.J., dissented, and remarked that it was a subtlety not warranted by law to hold that a man cannot bring two actions if he is injured in the arm and leg, but can bring two actions if not only his arm and leg, but also his coat-sleeve and trousers are injured. In the result judgment was entered for the plaintiff for the £350 recovered in the second action.

More than one action may also be brought in respect of subsidence. In *Darley Main Colliery Company* v. *Mitchell*, 11 App. Cas. 127, the defendants had worked a seam of coal under the plaintiff's land until 1868, and they then repaired the plaintiff's cottages which had been damaged by subsidence. In 1882 the plaintiff brought an action at Leeds Assizes based on further subsidence, and Mr. Justice HAWKINS gave judgment for the defendants under the Statute of Limitations. The Court of Appeal (Lord ESHER, then Sir W. B. BRETT, M.R., and Lords Justices BOWEN and FRY) reversed this decision and gave judgment for the plaintiff for such damages as an arbitrator should assess. The House of Lords affirmed this judgment, and held (1) that the cause of action in respect of further subsidence did not arise till that subsidence occurred; (2) the plaintiff could maintain an action for the injury caused thereby, although more than six years had elapsed since the defendants had worked the seam.

A case distinguished by the Divisional Court in the first-named case above, was *Bristowe* v. *Fairclough*, 1 M. & G. 143, which arose out of an agreement for dissolution of partnership. The court there held that the agreement comprised two separate promises, to be performed at different times and in different events. An action for breach of one term of the agreement therefore did not bar a subsequent action for breach of the other.

Practice Notes.

PROBATE.

THE position, as to costs, of executors propounding disputed testamentary documents is sometimes indifferently appreciated. The lure of costs out of the estate, besides "being responsible for much unnecessary litigation," as Lord Justice SCRUTTON puts it, obscures in the minds of some the consideration of the bases upon which an executor's privileged position rests.

The first is the validity of the testamentary document. Failure to establish that will relegate the named executor to the position of an unsuccessful litigant against whom costs follow the event, except that the costs may be ordered to be paid out of the estate, where the litigation has been brought about through the conduct of the testator, or where the parties, who have failed, have reasonably been led into the litigation by a *bonâ fide* belief in their case. This latter proviso should act *in terrorem* of executors of doubtful wills when it is considered that their protection as to costs depends on the exercise of the individual judge's discretion upon the facts.

Further, failure to establish the will must involve an innocent co-executor, who will suffer for the fault of an executor more affected with knowledge. An apparently extreme application of this principle is to be found in *In the Estate of Barlow*, 1919, P. 14 and 131. Two co-plaintiffs, a doctor and a solicitor, propounded as executors a will which was successfully impugned on the ground of undue influence of the doctor plaintiff and another. There was a finding by the judge in the court below that the solicitor plaintiff had acted throughout with care and propriety and he was given his costs out of the estate, but the Court of Appeal held that that order as to costs must be varied, and that both plaintiffs must pay the costs. SWINFEN EADY, M.R., said: "It is not a case in which the plaintiff HAYDON (the solicitor) is entitled by contract to his costs out of the estate because he is not in fact an executor as the will propounded by him was not established. . . . He was under no obligation to propound the will; he could have stood aside and left the plaintiff FAWCETT to establish it, and, if necessary, he could have been made a defendant to the plaintiff FAWCETT'S action."

In two recent cases the rights of executors to costs have been considered further in connexion with executors of a valid will propounding an invalid codicil. They are *In the Estate of Plant*, C.A., 1926, P. 139, and *Thomas and Another* v. *Jones and Others*, noted in 72 SOL. J., p. 255.

Pronouncement for the will in both cases established the plaintiffs *primâ facie* in their contractual or *quasi*-contractual rights to "solicitor and client" costs out of the estate under the proviso to r. 1 of Ord. LXV, but in *Jones' Case* the solicitor executor was adjudged to have been guilty of misconduct amounting to "a violation or culpable neglect of his duty under the contract" which deprived him and (following *Barlow's Case*, where, it will be remembered, executorship was not established) his less blameworthy co-plaintiff of their privileges as to costs.

It is to be noted also that where costs are ordered out of the estate and where the conduct of executors, specific legatees, though unsuccessfully impeached, has been the real cause of the investigation, the costs of all parties may be ordered to be paid out of the executor's legacies under Ord. LXV, r. 14D, as was done in *In the Estate of Osment*, 1914, P. 129.

Correspondence.

Testamentary Provision for Wives, Husbands and Children in the House of Lords.

Sir,—The following motion is to be moved by Lord Astor in the House of Lords on 16th May:—

> "That a Select Committee be appointed to see whether a change is necessary in the laws governing testamentary provision for wives, husbands and children based on the experience of Scotland, Australia and the other portions of the Empire."

My union (late the National Union of Women's Suffrage Societies, President Dame Millicent Fawcett) is very anxious to see some change in the law so that a husband (or wife) who has been accustomed to maintain his wife (or husband) and dependent children during his lifetime should be compelled if he (or she) has an estate, to make provision for them after his (or her) death.

Whether the principle of testamentary freedom—so cardinal a feature of English law—is to be infringed, as it has been in many of the Dominions under their Testator's Family Acts, which usually provide that maintenance for a wife and dependent children should, unless otherwise provided for, be a charge on a husband's estate, will depend, no doubt, partly on the extent to which hardship occurs under the existing law.

We regard the principle that a wife who has given up the major part of her life and sacrificed her opportunities in the labour market in order to make a home for her husband and children should not be left penniless on his death, as unexceptionable, but realise that the House of Lords is not likely to agree to set up a committee of enquiry unless it can be shown that a considerable number of hard cases exist under the existing law. In the very nature of the case these are not easy to obtain, as there being no remedy, many possibly remain unnoticed. Should, however, your readers

have come across any such cases, we should be most grateful if they would communicate with us. No names need, of course, be given.

EVA M. HUBBACK,
Chairman of the Parliamentary Committee,
National Union of Societies for Equal Citizenship.

15, Dean's-yard, S.W.1.

Gavelkind.

Sir,—In the "Conveyancer's Diary" column (p. 279) in your issue of the 28th April, discussing the case of *Re Price*, 1928, W.N. 107, it is stated that the case in question had to do with a copyholder entitled to a one-ninth undivided share of land in *Kent*. Now the number of copyholds in Kent was infinitesimally small, and it appeared extremely unlikely that the land was in Kent. On referring to the report in the "Weekly Notes," it appears that the case had to do with copyhold land parcel of the Manor of Abercorn in the County of Monmouth. This no doubt was merely a clerical error, and I would not trouble you in the matter but for the statement in the third column of the article, from which it is to be inferred that gavelkind lands in Kent are affected by L.P.A., 1922, 12th Sched. I submit that this is not so. The 12th Sched. operating under s. 128 (1) of that Act is confined to lands which were formerly copyhold and were enfranchised by that Act. The gavelkind lands in Kent were freehold of ancient socage tenure and consequently did not need enfranchisement, and are not affected by the 12th Sched. (They were no doubt affected by s. 128 (3) and also by A.E.A., 1925, s. 45.)

Of course in cases where gavelkind freeholds in Kent were holden of a manor paying quit rents, then they would be subject to the 13th Sched. of the Act of 1922, operating under s. 138, relating to compensation for manorial incidents, but not as I submit, to the 12th Sched., which is much more onerous.

Canterbury, 1st May. PERCY MAYLAM.

[We are grateful to Mr. Maylam for pointing out that the land considered in *Re Price* was in Monmouth, not in Kent, and was affected by a custom of descent akin to that of gavelkind. This does not affect the main points of our article. We agree, however, that land which is not either copyhold or customary within L.P.A., 1922, s. 189, is not affected by s. 128, sub-ss. (1) and (2), hence is not within the 12th Sched., though s. 128 (3), does apply; see the words "in free tenure." In *Re Price* the land was copyhold: thus was within the 13th Sched., as also would be any copyhold or customary lands in Kent. In no case can an entailed interest devolve according to local law: L.P.A., 1925, s. 130 (4), thus the exception in Ad. of E.A., 1925, s. 45 (2), makes no difference in this respect. —ED., *Sol. J.*]

Reviews.

A Guide to Land Registry Practice. By JOHN J. WONTNER. London: The Solicitors' Law Stationery Society, Ltd. 1928. vii and 98 pp. Price 6s. net.

The author of this guide describes its object as being "to give to Solicitors' Clerks and others practical and elementary information as to the procedure and work of His Majesty's Land Registry."

It is framed to avoid as far as possible all legal and technical phraseology, but though primarily a work prepared to assist the solicitor's clerk it contains much information that will prove helpful to solicitors generally. All who have had to do business at the Land Registry have felt that there was real need for some such guide as Mr. Wontner has written. So that the author is to be congratulated on his enterprise in undertaking the task of preparing this guide. He deserves further congratulation upon his success in condensing and carefully arranging within a hundred pages such a mass of useful and accurate information relating to the Land Registry practice.

Books Received.

Everyday Points in Practice under the Law of Property Acts. Being a Selection of Questions and Answers reprinted from "The Solicitors' Journal," 1925 to 1927. Arranged, revised and edited by ALFRED FELLOWS, B.A. (Cantab.), Barrister-at-Law. pp. xxviii and 535. 1928. The Solicitors' Law Stationery Society, Ltd., London: 22, Chancery-lane, W.C.2, 27 & 28, Walbrook, E.C.4, 6, Victoria-street, S.W.1, 49, Bedford-row, W.C.1, 15, Hanover-street, W.1. Liverpool: 19 & 21, North John-street. Glasgow: 66, St. Vincent-street. 21s. net.

Railway Passengers and their Luggage. GEO. B. LISSENDEN, Author of "Railway (Rebates) Case Law," etc. 1928. Large Crown 8vo. pp. viii and 114 (with Index). The Solicitors' Law Stationery Society, Ltd., London: 22, Chancery-lane, W.C.2; 27/28, Walbrook, E.C.4; 6, Victoria-street, S.W.1; 49, Bedford-row, W.C.1, and 15, Hanover-street, W.1. Liverpool: 19 & 21, North John-street. Glasgow: 66, St. Vincent-street. 5s. net.

The Stock Exchange Official Intelligence for 1928. Being a carefully revised précis of information regarding British, Indian, Dominion, Colonial, American, and foreign securities, edited by the Secretary of the Share and Loan Department of the Stock Exchange. Spottiswoode, Ballantyne & Co. Limited, 1 New-street-square, E.C.4. £3 net.

Butterworth's Yearly Digest of Reported Cases for 1927; being the yearly supplement of "Butterworth's Twenty-nine Years' Digest," 1898-1927. W. S. GODDARD, M.A., Barrister-at-law. 1928. Medium 8vo. pp. xix, 351 and (Lists of Statutes and Cases) 25. Butterworth & Co. (Publishers) Limited. 21s. net.

Kime's International Law Directory for 1928. A list of Solicitors in Great Britain and some of those in various places throughout the world. PHILIP W. T. KIME. Thirty-sixth year. Crown 8vo. pp. xiii and 461. London: Butterworth & Co., Kime's International Law Directory, 88/90 Chancery-lane, W.C.2.

Prevention of Bribery. The news-sheet of The Bribery and Secret Commissions Prevention League (Incorporated). No. 147. 16th April, 1928. 22 Buckingham-gate, S.W.1.

The Law of Rating and Valuation (outside London). JOSHUA SCHOLEFIELD, K.C., and J. LEONARD CROUCH. 1928. Demy 8vo. pp. xliv, 411 and (Index) 32. Butterworth and Co. (Publishers) Limited. 15s. net.

The Problem of Trust and Monopoly Control. A. P. L. GORDON, B.A. (Oxon). 1928. Crown 8vo. pp. vii and 186 (with Index). George Routledge & Sons Ltd., Broadway House, 68-74 Carter-lane, E.C. 5s. net.

A History of Lloyds. From the Founding of Lloyds Coffee House to the Present Day. CHARLES WRIGHT, Chairman of Lloyds Brokers Association, and C. ERNEST FAYLE, Author of "Sea-borne Trade" (Official History of the Great War). 1928. pp. xxi and 475 (with Index). Macmillan and Co. Ltd., St. Martin's-street, London. 25s. net.

"*The Principles and Practice of the Law To-day.*"—Lecture given by The Right. Hon. Lord Justice SANKEY before the University of London. Reprinted from the SOLICITORS' JOURNAL. Demy 8vo. 24 pp. THE SOLICITORS' JOURNAL (Publishing Department), 29 Breams-buildings, E.C.4. 2s. including postage.

POINTS IN PRACTICE.

Questions from Registered Annual Subscribers are invited and will be answered by some of the most eminent authorities of the day. All questions should be addressed to—The Assistant Editor, "The Solicitors' Journal," 29, Breams Buildings, E.C.4, be typewritten on one side of paper only, and be in duplicate. Each copy to contain the name and address of the subscriber. To meet the conveniences of Subscribers, in matters requiring urgent attention, answers will be forwarded by post if a stamped addressed envelope is enclosed.

Settled Land—General Grant—Title.

Q. 1238. A died intestate in 1910 seised of freehold property, and leaving her husband, B, and eldest son, C, surviving. B took out administration, and he was entitled to an estate by the curtesy. C died in 1917 leaving an only daughter, D, who attained twenty-one a few months ago. B died in 1926, and a general grant was made to his executors as B did not appoint special executors. D has recently taken out letters of administration *de bonis non* of A's estate, and also letters of administration of C's estate as regards the freehold property. The freehold property is now to be conveyed to a purchaser, and the vendor's solicitors submit that the conveyance should be from A's personal representative, after assent to her by the special executors. On the other hand, the purchaser's solicitors think it should be either from D as beneficial owner, or, at any rate, from C's personal representative. Should B's special executors assent to A's personal representatives and then A's personal representatives assent to C's personal representatives, and C's personal representatives assent to D as beneficial owner? It is assumed that a declaration as to heirship would be required if D conveyed as beneficial owner, unless the purchaser could rely on s. 36 (7) of the A.E.A. Doubts have arisen whether A's personal representative could now convey, as it is suggested that when the legal estate was vested in the tenant for life on the 1st January, 1926 (such tenant for life being also trustee of the settlement under s. 30 (3) of the S.L.A, 1925), it was taken out of A's personal representative for good, and cannot go back again. If this is so, who is the person entitled to receive assent of the special executors under s. 36 (1) of the A.E.A.? In what way should the conveyance be taken by the purchaser?

A. It seems a reasonable assumption to make, having regard to a lapse of fifteen years since A's death, that his estate had been completely administered on 31st December 1925, and that therefore the legal estate in the property became vested in B as trustee estate owner: L.P.A., 1925, 1st Sched., Pt. II, paras. 3, 5, 6 (*c*). A general grant in respect of B's estate vested the property in his executors. Had D not obtained a grant in respect of A's estate, B's executors could have made title without any further complications. Even after such grant it seems that the legal estate in the property remained in B's executors; for only the unadministered estate (if any) of A was vested by the grant *de bonis non* in D. Hence, the proper persons to make title are B's executors. They may, if they like, assent in writing to D, and she can convey as beneficial owner and with Ad. of E.A., s. 36 (7), operating in favour of a purchaser from her.

Settled Land or Trust for Sale—Immediate trust for Sale—Title.

Q. 1239. W, in 1913, executed a voluntary settlement of freehold premises (appointing J trustee), upon trust at the request in writing of E during her life, and after her decease at the discretion of the trustee, to sell—income to E for life, and after her death in trust for all or such one or more exclusively of the others or other of the children or remoter issue of E by W at such age or time or respective ages or times if more than one in such shares and with such trusts for their respective benefit and such provisions for their respective advancement and maintenance and education at the discretion of the trustee or any other person or persons as E and W should by any deed or deeds revocable or irrevocable jointly appoint, and in default of and subject to any such appointment as the survivor of E and W should in like manner or by will or codicil appoint, and in default of and subject to any appointment under the respective powers hereinbefore contained, in trust for M and B (daughters of E) or such of them as should be living at the time of the death of E and such of the children living at that time of either or both of M and B who should then be dead as being male should attain the age of twenty-one years or being female should attain that age or marry, and if more than one as tenants in common in equal shares. W died in 1914 and E (the tenant for life) in 1926, appointing J sole executor of her will. J duly proved the will, the grant including the settled land the subject of the voluntary settlement. The joint power and power of survivor of appointment was not exercised, and M and B (both now living) are therefore the beneficiaries. J has now contracted to sell the settled premises.

(1) Is any assent necessary?

(2) It will, of course, be necessary for J to appoint another trustee to receive the purchase-money?

(3) Is there any objection to the conveyance being made by the two beneficiaries, M and B, the trustee joining in for the purpose of conveying the legal estate and thereby dispensing with the appointment of another trustee?

(4) We act for the trustee, the beneficiaries and also the purchaser, and if the conveyance is made in the manner indicated in (3), is it necessary that the purchaser should be asked to obtain separate advice, having regard to the provisions of L.P.A., s. 42 (1) (*a*)?

(5) Could you indicate appropriate precedents?

A. The land was held upon trust for sale even during the life of E; see L.P.A., 1925, s. 205 (1) (xxix), and, in particular, the words "whether or not exercisable at the request . . . of any person." The purchaser is entitled to a conveyance from *two* trustees for sale, and in view of the protection afforded a purchaser from trustees for sale he is advised to insist on his rights. Another method of making title would be for the surviving trustee to convey to M and B for them to convey as trustees for sale. It seems that title can be made as suggested in (3), but this is not advised. For precedents of appointment of new trustee, see 3 Prid., pp. 430, *et seq.*, and of conveyance by trustees for sale, I Prid., pp. 605, *et seq.*

Real Property Limitations Acts—Time of Running.

Q. 1240. In January, 1894, A (a bachelor), being then seised in fee simple in possession of two plots of freehold land, deposited the title deeds with B as security for a loan. Shortly afterwards A informed his brother C (by letter) of his intention to go abroad, asked C to settle up his affairs, and with regard to the freehold land said, "I have had a loan on my ground for which you will have to pay £2 a fortnight back—the deeds are with B—when you have paid it you can have it." In February, 1894, C wrote to B enquiring if he would transfer his security to him on payment of his loan, B replied assenting. In March, 1895, C paid B the final instalment, received the title deeds, and entered into possession of the rents and profits of the land. He has remained in undisturbed possession since, and no acknowledgment has ever been given of A or any person claiming under him having any right or title to the land. A returned to England in or about 1900, married, and died in or about 1906, leaving a widow and two infant sons. It is apprehended that the equitable charge of B passed to C even though there was no transfer in writing: *Brocklesby* v. *Temperance Building Society*, 1895, A.C. 173, and that the right

of A and all persons claiming under him to redeem is barred, even though the twelve years prescribed by R.P.L.A., 1874, s. 7, may not have expired at the time of A's death: *Forster* v. *Patterson*, 1881, 17 C.D. 132. Is it advisable for C to take any, and what, steps to perfect his title? Section 88 (3) of the L.P.A., 1925, would not appear to include an equitable charge.

A. Over thirty years' undisputed possession of the land has undoubtedly given C a statutory title to it, both as against A and his heirs, executors and assigns and B, and it is conceived that such a title would be forced on a purchaser, see *Atkinson and Horsell's Contract*, 1912, 2 Ch. 1. The date of A's death is immaterial. In view of A's letter, there could be no claim that C held as trustee for A. Time having begun to run against A, the running continued notwithstanding the infancy of persons entitled under his will or intestacy, see *Garner* v. *Wingrove*, 1905, 2 Ch. 233.

Income Tax—Arrears of Mortgage Interest—Mortgaged Reversion.

Q. 1241. (1) Please refer us to any cases or text books dealing with income tax on accumulated arrears of interest on mortgages, particularly with reference to the following questions.

(2) A mortgage of reversionary property allows compound interest to be charged on arrears of interest (payable half-yearly). Interest has been in arrear for several years when the reversion falls in. Should the mortgagee's accounts show deduction of tax half-yearly before capitalising the interest?

(3) Alternatively, should tax not be deducted would the mortgagee be accountable to the revenue for tax on the whole arrears of interest and compound interest, and if so whether as a profit of the year in which the reversion falls in.

(4) In the event of the first method being adopted, it would appear that the mortgagor is the accountable person for the tax allowed each year. In this event would the case be treated as coming under 19 or 21 of the General Rules of the First Schedule to the Income Tax Act, 1918?

A. (1) The following cases are relevant:

In re Craven's Mortgage: Davies v. *Craven*, 1907, 2 Ch. 448; 97 L.T. 475.

In re Morris: Mayhew v. *Halton*, 1921 1 Ch. 172; affirmed 1922, 1 Ch. 126; 126 L.T. 281.

Bebb v. *Bunny*, 1854, 1 K. and J. 216.

Graham v. *Seal*, C.A. 1919, 88 L.J. Ch. 31; 119 L.T. 526.

A convenient summary of the cases appears in the Ninth Edition of "Dowell's Income Tax Laws," at pp. 750-752.

(2) The decisions in the first two of the above quoted cases appear to cover the present case. In making a payment of principal and interest when the reversion falls in, the mortgagor should deduct tax on the whole of that part of the aggregate sum that represents interest, whether interest on principal or interest on capitalised interest. Provided that there is provision for the calculation of the compound interest with reference to yearly or half-yearly periods, it is immaterial as to how the mortgagee chooses to deal with the matter in his books, vide the Master of the Rolls in *Mayhew* v. *Halton*. The tax, however, cannot properly be dealt with until the interest is actually paid.

(3) This does not arise, but if it did, the interest would be chargeable as a profit of the year of receipt by assessment on the mortgagee.

(4) The answer depends on whether the interest can be said to be paid wholly out of profits or gains brought into charge to tax. It would usually be the case that the interest can be covered, and then r. 19 would apply, which means that the mortgagor has no further responsibility to the revenue.

Company—Shares—Transfer—Issue of Bonus Shares.

Q. 1242. A was formerly entitled to certain shares in X company limited. On 26th September, 1927, he executed a transfer (which transfer was dated as at date of execution) transferring these shares to himself, A, jointly with B and C in pursuance of a marriage settlement of which A, B and C were the trustees. The transfers were not presented to the X company for registration (owing to delays in stamping) until 21st January, 1928, and in the meantime on the 21st October, 1927, the X company had passed a resolution allotting bonus shares to the shareholders, one such bonus share for each share previously held by each shareholder. The company was asked to issue certificates for both the original shares transferred as above, together with the bonus shares in respect thereof, in the names of A, B and C, they contending that although the transfer was not registered with the Company at the date when the bonus was declared, the transfer carried with it all benefits as from the date of the transfer, and that the transferees A, B and C were therefore entitled to be registered as the owners of the bonus shares. The X company refuses to register A, B and C as owners of these bonus shares without presentation to them of a formal stamped transfer of the shares from A to A, B and C, contending that the bonus shares were issued to those persons who were shareholders at the date of the issue, and that the company can only recognise A, B and C as owners of the shares as from date of registration of transfer. The company's articles of association provide: "The instrument of transfer of a share shall be signed both by the transferor and the transferee, and the transferor shall be deemed to remain the holder of the share until the name of the transferee is entered in the register of members in respect thereof." We (acting for transferor and transferees) submit that there can be no doubt that as between transferor and transferees, the transferees are entitled to the bonus shares, and that the company is bound to issue the certificate in respect of the bonus shares in the names of the transferees, and in any case we fail to see any reason why the transfer should be required or what liability could attach to the company through issuing the certificate as requested. There is of course no liability attached to the shares original or bonus, which are fully paid. For certain reasons (including that the transferor is now abroad) it is desired if possible to avoid the necessity of another transfer.

A. The company's view, in our opinion, is right. While in equity the transferees are clearly entitled to the bonus shares, their complete legal title is not obtained till a transfer of those shares has been registered, and no such transfer has been executed.

Cost in Local Inquiries—The Public Health Act, 1875, Small Holdings and Allotments Acts, 1908-22—Town Planning Acts, 1909-25.

Q. 1243. Is there any precedent for the Ministry of Health awarding to a successful objector at a local public inquiry under the Town Planning Acts costs against the local authority promoting the town planning scheme? If so, what is the procedure to be adopted in securing and enforcing the award?

A. By s. 18 of the Town Planning (Consolidated) Act, 1925, it is provided that ss. 293 to 296 of the Public Health Act, 1875, shall apply for the purpose of any order to be made by the Minister of Health or any local inquiry which the Minister may cause to be held in pursuance of any part of that Act. Section 294 of the Public Health Act, 1875, gives the Minister power to "make orders as to costs of inquiries and as to the parties by whom or the rates out of which such costs shall be borne." We should have thought from the wording of this section that it clearly gave a discretionary power to the Ministry of Health to award costs to any party succeeding in its objections at a local inquiry. There seems to be no ambiguity or qualification in the section. Yet strangely enough the Local Government Board, until it became the Ministry of Health, took the view that the section only related to the award of costs as between the local authority and the Board itself. The Ministry, however, carefully reviewed the interpretation of the section and caused an instruction to be issued to the appropriate officials of the department intimating

that the section had been hitherto too narrowly construed, and that there was clear power to award costs to any parties appearing before a local inquiry. We are not aware of any case under the Town Planning Acts in which this power has been exercised in practice. We do, however, know of a case under the Small Holdings and Allotments Acts, 1908-22, where costs have been awarded to parties successfully objecting to the proposed compulsory acquisition of their land at a local inquiry. That case is definitely in point. By s. 57 of the Allotments Act, 1908, all the provisions of ss. 293 to 296 of the Public Health Act, 1875, are applied for the purposes of local inquiries and costs under the Allotments Acts the same as under the Town Planning Acts. In that case the Nelson Corporation made an order for the compulsory acquisition for allotments of land belonging to two local cotton manufacturers. Both these firms successfully objected at a local inquiry. Upon the decision in their favour being made known they made application to the Ministry of Agriculture for costs against the Nelson Corporation. They then argued the case by counsel and the Ministry awarded costs on 6th May, 1926. By originating motion the objectors applied in the Chancery Division for an order to make the award a Rule of Court. This was granted, and costs were taxed by one of the Chancery taxing masters. This was in January last year. The local (Burnley and Nelson) papers had full reports of all the proceedings at their different stages. So far as we know there is no report in any of the law reports or law papers.

Income Tax—Deduction from Rent.

Q. 1244. A lessor agrees under the terms of a lease to bear rates and taxes. The tenant pays the rates and deducts them from the rent; he also deducts income tax on the *full* amount of the rent, the property being assessed at more than the full rent, owing to increased value since the lease was granted. Can he deduct on the full rent or should he not deduct on the net rent paid, namely, the rent less rates. The rules of the Income Tax Acts do not seem to definitely touch the point, and I can find no reported case on it.

A. Rule 1 of No. VIII of Sched. A, would appear to cover this point. It provides that a tenant who pays tax shall be entitled to deduct or retain "in respect of the rent payable" an amount representing the rate of tax in force during the period of accrual. Further, in estimating "annual value" for purposes of Sched. A assessment, the rack rent is regarded after deduction of rates when these are borne by the owner. It is clear that the tenant in the case referred to may deduct tax only in respect of the portion of the payment he makes to the owner which represents rent.

Voluntary Lettings.

Q. 1245. A leasehold dwelling-house was assigned to A and B as joint tenants by deed in 1921. The purchase price of £500 was provided as to three-tenths by A and as to seven-tenths by B. Shortly after the date of the assignment A agreed that his unmarried sister, who was and is now in occupation of the dwelling-house, should live in the house rent free, or, if at any time she desired to let it, should have the income thereof for life. A was at the date of the deed and is now liable to income tax. B was then and is now an exempt person by reason of her total income being under £135. The property has always been returned by B on making her yearly re-claim in respect of other investments. The position was explained to the Inspector of Taxes in or about 1922, and no claim was then made against A in respect of Sched. A tax, and, though the inspector subsequently made further enquiries, with regard to the joint holding, he has until lately evidently been satisfied that A was not liable for Sched. A tax, in view of the agreement, as A has never received any income in respect of the property. In January, 1927, A conveyed his undivided share in the property to B absolutely, and no consideration money was paid, though for stamp duty purposes a consideration of £200 was expressed in the deed. A has now received demand notes for the years 1922 to 1927 claiming Sched. A tax in respect of one-half value of the property. In the circumstances is A liable for payment of the tax? Please quote authorities if necessary.

A. Rule 1 of No. VII of Sched. A, provides that the tax shall be charged on and paid by the "occupier" for the time being, and r. 2 defines the word "occupier" as including "every person having the use of any lands or tenements." As the tenancy of the dwelling-house, as to one-half, is at the free gift of "A" it would appear that he has the "use" of the premises, and that the assessments are, therefore, in order. The judgment in *Commissioners of Inland Revenue* v. *Wemyss*, 1924, S.C. 284, is appropriate.

NOTES OF CASES.

Court of Appeal.

No. 1.

Catton *v.* **Ashwell & Nesbitt Ltd.** 1st and 23rd March.

Workmen's Compensation—Accident—Compensation paid for Period—Notice Discontinuing Payment—Application to Review and Terminate—Payment of Sum into Court Pending Review—Action by Workman in High Court—Declaration of Right to Continuing Payment Claimed—No Breach of Duty and no Jurisdiction—Action Dismissed—Workmen's Compensation Act, 1925, 15 & 16 Geo. 5, c. 84, ss. 12, 21—Workmen's Compensation Rules, 1926, r. 19.

Appeal from a decision of Clauson, J.

The plaintiff, who had been in receipt of weekly payments of compensation for injury by accident under the Workmen's Compensation Act, claimed a declaration that the employers were bound to go on paying him, and had committed a breach of statutory duty for which he claimed an injunction and damages.

The plaintiff met with an accident causing temporary incapacity on 1st August, 1926. The defendants admitted liability, and paid compensation down to 16th July, 1927, when they discontinued the payment, having previously given notice to the plaintiff that they were advised that he had fully recovered from the injury on 30th May, 1927, and that they would apply for a review and termination of the weekly payment. On 16th July the defendants filed an application for a review, and having ascertained that the arbitration would probably come on about the end of October paid into court the sum of £24, and stopped the weekly payment. The plaintiff then commenced the present action, after suing in the county court at Greenwich for an injunction, which the county court judge refused.

Clauson, J., dismissed the action, holding that the plaintiff had failed to prove that the defendants had committed any breach of statutory duty, as it had not been shown that the plaintiff was still incapacitated, the county court judge being the sole arbiter of that question. The plaintiff appealed. *Cur. adv. vult.*

Lord Hanworth, M.R., said the action was really an attempt to nullify the decision in *Ocean Coal Co.* v. *Davies*, 1927, A.C. 271, and *Niddrie and Benhar Coal Co.* v. *Dee*, 1927, A.C. 299, and was based on certain dicta of Lord Wrenbury and Lord Carson in the first case, suggesting that the workman even after incapacity had ceased was entitled to a weekly payment *de facto* until ended by an award of the county court judge. The argument assumed that any over payments would be recoverable from the workman, but this was contrary to the rule that money paid under compulsion of law was irrecoverable: *Marriott* v. *Hampton*, 2 Sur. L.C. 431. The workman was not entitled to continue receiving a weekly payment once the employers had applied for a review and

termination. There was power under r. 19 to pay any amount in dispute into court to await the award. The action was futile and the appeal must be dismissed.

COUNSEL: *Sir H. Slesser*, K.C., and *Rewcastle*; *Edgar Dale* and *J. Alan Pugh*.

SOLICITORS: *Mills, Lockyer, Church & Evill*; *Carpenters*.

[Reported by H. LANGFORD-LEWIS, Esq., Barrister-at-Law.]

In re Blackwell; Blackwell *v.* Blackwell.

(Lord Hanworth, M.R., Lawrence and Russell, L.JJ.)

20th and 23rd April.

WILL—CODICIL—LEGACY TO TRUSTEES—SECRET TRUST—PAROL EVIDENCE TO EXPLAIN NATURE OF TRUSTS—MEMORANDUM MADE BY ONE TRUSTEE—TRUST ACCEPTED BY ALL TRUSTEES BEFORE DEATH OF TESTATOR.

A testator made his will in favour of his wife and son. On 13th February, 1925, he executed a codicil, bequeathing to five friends the sum of £12,000, upon trust to apply the income, and, in a limited sense, the capital, upon certain trusts indicated to them. Upon the same day W.P.C., one of the trustees, who had prepared the codicil upon the verbal instructions of the testator, wrote out and signed a memorandum of the trust as follows: "Income of £12,000 to be given to" (a lady's name and address followed) "or applied at discretion of trustees for the benefit of herself and her son . . ." (further trusts followed). The other four trustees were told of the trust by the testator and accepted it. The testator died on 3rd June, 1925, and his widow and son brought an action claiming a declaration that no valid trusts were declared of the sum of £12,000, which belonged to the testator's residue, and that any directions given by the testator as regards the sum were void for uncertainty. The five trustees defended the action, and alleged that valid trusts had been declared to W.P.C. in detail, and to all the other trustees in outline, and that they should be given effect to. Eve, J., held that in a somewhat similar case in 1880, *In re Fleetwood; Sidgreaves* v. *Brewer*, 15 Ch. D. 594, parol evidence had been admitted to explain a secret trust. The evidence of W.P.C. was therefore admissible in explaining the trusts of the £12,000, and the trusts must be held valid. The plaintiffs appealed. The court dismissed the appeal.

Lord HANWORTH, M.R., said that the Court had been invited by the appellants to say that parol evidence of a secret trust ought not to be admitted, as that was going behind the provisions of the Wills Act, which said that all testamentary dispositions must be in writing, and therefore that there were no trusts declared of the £12,000. In *In re Fleetwood*, however, such evidence had been admitted, and the decision had stood for forty-eight years. Further, in *In re Huxtable; Huxtable* v. *Crawford*, 1902, 2 Ch. 793, the judge in the court below had followed *In re Fleetwood*, and although the Court of Appeal had reversed his decision upon another point, they had apparently affirmed his view of the correctness of the decision in *In re Fleetwood* as to the admissibility of such evidence. That decision was therefore in effect a decision of the Court of Appeal, and so binding upon the present court.

COUNSEL: *Sir Thomas Hughes*, K.C., and *J. M. Easton*, for the plaintiffs; *Gavin Simonds*, K.C., and *John Bennett*, for the five trustees; *C. A. Bennett*, K.C., and *Raymond Jennings*, for the beneficiaries under the secret trust.

SOLICITORS: *Rooke & Sons*, for *T. & G. S. Brownson*, Manchester; *Simmons & Simmons*, for *March, Pearson, Yates & Green*, Manchester, and *Graham-Hooper & Betteridge*, Brighton.

[Reported by G. T. WHITFIELD-HAYES, Esq., Barrister-at-Law.]

High Court—Chancery Division.

Wild *v.* Petre.

Russell, J. 14th, 15th, 16th and 21st March; 2nd April.

MORTGAGE OF SHARES TO SECURE A LOAN—INTEREST NOT PAID—MORTGAGEE RETAINS THE SHARES—DIVIDEND MORE THAN SUFFICIENT TO REPAY LOAN AND INTEREST—REDEMPTION SUMMONS—CLAIM TO BALANCE OF DIVIDEND—PERSONAL ORDER FOR PAYMENT NOT OBTAINABLE ON ORIGINATING SUMMONS—R.S.C. ORDER LV., r. 5A.

Originating summons.

In 1900, certain shares in a limited company were mortgaged to L to secure a loan of £1,000 for three months, with interest at 6 per cent. The loan was not paid off, and the interest was in arrear, but the dividends received by the mortgagee cleared the interest up to 1908. No dividends were paid between 1908 and 1916, but the mortgagor took no step to sell, foreclose or obtain a release of the equity of redemption, being content to rest on his security. In 1916, the company started paying dividends again, and by 1921 the mortgagee had received in dividends a sum equal to the amount of the loan. In 1923 he died, at which date he had received in dividends more than sufficient to repay him the £1,000 principal with interest at the agreed rate from the date of the loan. The plaintiffs, who were the assignees of the equity of redemption in the shares, informed the defendants, the executors of L, in 1926, that they claimed the right to redeem the security. The executors disputed this right, and the summons was taken out, and the plaintiffs asked on the summons that on payment of what was found due they should be at liberty to redeem the shares. They also asked for an account of the dividends received by L and his executors, and for payment of the balance after deducting the amount of principal, interest and costs in respect of the loan.

RUSSELL, J., after stating the facts, said: *Prima facie*, the plaintiffs are entitled to redeem. There is no statute of limitation to bar the right to redeem, but the defendants say that in view of the plaintiffs' delay, the Court ought not to grant the equitable relief sought. The plaintiffs are entitled to assume that L held the shares as mortgagee until the time arrived when the loan had or might have been paid off out of the dividends received by him. That event occurred in 1921, and in 1926 the plaintiffs set up their right to redeem. No more than five years' delay could be imputed to the plaintiffs and such delay is no answer to the present claim. When the account was taken nothing would be found due to the defendants in respect of principal, interest and costs. The shares were available, and no one had altered his position in the meantime. Equity ought not to deprive a mortgagor of his right to redeem, provided that when he asserted the right the debt had been or could be repaid, the security was available, and no one's position had been altered in the meantime. In such circumstances the mortgagor ought to be allowed to redeem, unless his right has been destroyed by statute, foreclosure, sale or release. There is no difficulty in the present case in ordering a re-assignment of the shares, but if the plaintiffs wished to recover from the defendants any moneys received over and above the amount of principal, interest and costs, they must proceed, not by originating summons, but by writ. The relief obtainable under Ord. LV, r. 5A, does not include a personal order for payment against the mortgagee.

COUNSEL: *Jenkins*, K.C., and *B. A. Hall*; *Spens*, K.C., and *Evershed*.

SOLICITORS: *Gregory, Rowcliffe & Co.*, for *Wild & Wild*; *William A. Crump & Son*.

[Reported by L. M. MAY, Esq., Barrister-at-Law.]

High Court—King's Bench Division

Lloyd *v.* **Cook.** Salter and Charles, JJ. 21st March.

RENT RESTRICTION—PART OF DECONTROLLED PREMISES RE-LET—NEW DWELLING-HOUSE—RIGHT TO STANDARD RENT BY APPORTIONMENT—INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS) ACT, 1920, 10 & 11 Geo. 5, c. 17, s. 12 (2); RENT AND MORTGAGE INTEREST RESTRICTIONS ACT, 1923, 13 & 14 Geo. 5, c. 32, s. 2 (1).

Appeal from a decision of Judge Hill-Kelly, Bloomsbury County Court.

The respondent, holder of a ninety-nine years' lease of premises at 14, Eversholt-street, Camden Town, N.W.1, had let three rooms on the third floor to a tenant who vacated them on the 12th August, 1926. One of the three rooms was subsequently occupied by the respondent's son, and on the 28th August, 1926, the remaining two rooms were let at 14s. a week to the present appellant, who then applied to the registrar to fix the standard rent of the two rooms by apportionment of the rent of the whole house, on the ground that the rooms were a "dwelling-house" under the Rent Restrictions Acts. The decision of the registrar, fixing the standard rent at 5s. 8d. a week, was reversed on appeal by the county court judge, who held that the rooms had become decontrolled under s. 2 (1) of the Rent and Mortgage Interest Restrictions Act, 1923, and were no longer protected. The tenant appealed.

SALTER, J., said that unless it could be shown that the rooms in question had become decontrolled under s. 2 (1) of the Act of 1923, the appellant was entitled to an apportionment under the principal Act of 1920, s. 12 (2). The three rooms comprising the dwelling-house of the previous tenant undoubtedly became decontrolled when his tenancy expired, but it did not follow that the new dwelling-house of two rooms let to the appellant was also decontrolled. He, his lordship, was of the opinion that it was not. The tenant was entitled to apportionment, and the appeal was allowed.

CHARLES, J., concurred.

Leave to appeal was granted.

COUNSEL: *John Duncan* for the appellant; *J. C. Lockwood* and *Gordon Clark* for the respondent.

SOLICITORS: *A'Deane Gent Wood; E. M. Tringham.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Jenkins *v.* **Jenkins.** Salter and Talbot, JJ. 29th March.

JOINT MAKERS OF PROMISSORY NOTE—DEATH OF CREDITOR—ONE MAKER MADE EXECUTOR—ACTION ON THE NOTE AGAINST CO-MAKER—DEBT EXTINGUISHED BY DEATH.

Appeal from Swansea County Court. On the 1st December 1923, the plaintiff, Lewis Jenkins, the defendant, Isaac Jenkins, and two others, executed a promissory note whereby they jointly and severally promised to pay one Joseph Elliott the sum of £100. Elliott died on the 18th March, 1924, and by his will, dated the 24th February, 1912, the plaintiff was appointed his sole executor. The plaintiff, suing as executor, commenced proceedings in the county court against the defendant, a co-maker of the promissory note, on the 15th August, 1927, claiming on the note. Judgment was given in his favour; the defendant appealed.

SALTER, J., said that the debt had been discharged before the action, and that the claim should have been dismissed on that ground. At common law, when an executor was jointly and severally indebted with others to a testator, the effect of the death of the testator was to release the debt as between the testator, and all and each of the debtors. In equity, the executor was held liable to pay the debt if the interests of the creditor required it, and unless a continuing intention on the part of the testator to make the executor a gift of the debt could be shown. In either case in the present matter the debt had ceased to exist before action brought, and the appeal must be allowed.

TALBOT, J., delivered judgment to the same effect.

COUNSEL: *P. B. Morle*, for the appellant; *Roland Burrows*, for the respondent.

SOLICITORS: *T. D. Jones & Co.*, for *Edward Harris*, Swansea; *F. C. Mathews & Co.*, for *Beor, Wilson & Lloyd*, Swansea.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Elvington Tenants, Ltd. *v.* **Hatton.**

Salter and Talbot, JJ. 30th March.

NOTICE OF INCREASE OF RENT—VALIDITY—REPAIRS—COUNTY COURT DECISION—NO RIGHT OF APPEAL—INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS) ACT, 1920, 10 & 11 Geo. 5, c. 17, s. 2 (6).

Preliminary objection to an appeal from Dover County Court. The appellant, H. E. Hatton, tenant of a cottage belonging to the respondents, was served on the 15th July, 1927, with a notice of increase of rent in respect of the rates, the 15 per cent. increase allowed to landlords generally, and the 25 per cent. allowed when the landlord was wholly responsible for repairs. The increase in respect of repairs was disputed by the tenant on the ground that he was partially liable for them, and the landlords thereupon applied to the county court to determine the question of the validity of the notice of increase, and also whether the landlords were responsible for the whole of the repairs. The county court judge decided both these questions in the affirmative. The tenant appealed. Counsel for the respondents took a preliminary objection that no appeal lay, and contended that s. 2 (6) of the Rent Act, 1920, provided that the decision of the county court judge was final.

SALTER, J., was of the opinion that the county court judge clearly had jurisdiction to determine the validity of the notice of increase, and that his decision was rendered final and conclusive by the terms of s. 2 (6) of the Act of 1920. He thought that it was the intention of the legislature in applications where small tenancies were involved that the decision of the county court should be summary and final, and held that no appeal lay from it in the present case.

TALBOT, J., concurred.

COUNSEL: *H. H. Maddocks*, for the appellant; *B. H. Waddy*, for the respondents.

SOLICITORS: *V. D. de Wet*, Dover; *F. A. Cloke*, Sandwich.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

More *v.* **Weaver.** Swift, J. 3rd and 7th May.

LIBEL AND SLANDER—COMMUNICATIONS BETWEEN SOLICITOR AND CLIENT—ABSOLUTE PRIVILEGE.

The plaintiff, Kathleen Frances Mervin More, brought an action against the defendant, Flora Gertrude Weaver, for damages in respect of alleged libel and slander. The parties had been for six years visitors at the Victoria Hotel, Kensington, W., and the plaintiff alleged that in November, 1923, the defendant offered to lend her and induced her to accept a loan of £7,000, without security or interest, to buy the hotel with a view to running it. She further alleged that later the defendant maliciously spoke and published of her that she was a fraudulent person, incompetent in her business, and that she had ruined the hotel. The plaintiff pleaded that the defendant not only published them herself, but instructed her solicitor by letter to publish them also; she claimed £25,000 damages. The defendant denied that the words complained of were defamatory and pleaded that the letters to her solicitor were absolutely privileged.

SWIFT, J., said that the defendant's letters to her solicitor were for the purpose of his advising and assisting her. He was of the opinion that those communications were absolutely

privileged, and that there was abundant authority for that opinion in *Brown* v. *Dunn*, 1890, 6 Rep., 67, at p. 80. He was further strengthened in his view by a passage from Fraser, J.'s "The Law of Libel," at p. 190, dealing with the decision in *Morgan* v. *Wallis*, 33 T.L.R. 495. In the present case no action for defamation lay in respect of the communications which were absolutely privileged; if that view were wrong and the libels were the subject of a qualified privilege, then there was no evidence of any malice to destroy the privilege. There was no case to go to the jury. Judgment for the defendant, with costs.

COUNSEL: The plaintiff appeared in person; *Rayner Goddard*, K.C., and *H. O'Hagan*, for the defendant.

SOLICITORS: *Maitland, Peckham & Co.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Societies.

The Law Society.

HONOURS EXAMINATION.

MARCH, 1928.

The names of the solicitors to whom the candidates served under articles of clerkship are printed in parentheses.

At the examination for honours of candidates for admission on the Roll of Solicitors of the Supreme Court, the Examination Committee recommended the following as being entitled to honorary distinction:—

FIRST CLASS.

(In Order of Merit).

1. John Pierce Buchanan, B.A. Oxon. (Mr. David Henry Tompkins, of the firm of Messrs. Cain, Tompkins, Carter and Hill, of London).

2. Alfred Bate (Mr. Joseph Henry Bate, of the firm of Messrs. Allington Hughes, Bate & Newman, of Wrexham; and Messrs. Jaques & Co., of London).

SECOND CLASS.

(In alphabetical order).

William Bains (Mr. Edmund Thomas Fox, of Brigg).

Francis Eric Dawes, M.A., LL.B., Mus.B. Cantab. (Mr. Frank Dawes, of the firm of Messrs. Bonser & Dawes, of Oldbury).

Edward Roderick Dew, LL.B. London (Mr. Henry Theodore Michelmore, LL.B., of the firm of Messrs. Michelmores, of Exeter).

William Epton (Mr. Edward White, of the firm of Messrs. Burton, Scorers & White, of Lincoln; and Messrs. Taylor, Jelf & Co., of London).

Alexander Fine, LL.B. London (Mr. Henry Snowman, B.A., of London).

John William Grey (Mr. Frederick Charles Boyes, of the firm of Messrs. Grover, Humphreys & Boyes, of London).

Richard Claussen Hansen (Mr. John William Jackson, O.B.E., of Grimsby).

William Trevor Jones (Mr. David John Edmonds, of the firm of Messrs. G. S. Warmington & Edmonds, of London).

Clifford Knight (Mr. Arthur Douglas Dallow, LL.B., of the firm of Messrs. Dallow & Dallow, of Wolverhampton; and Messrs. Maude & Tunnicliffe, of London).

William Andrew Mackinlay (Mr. Francis Henry Jackson, of the firm of Messrs. Jacksons & Monk, of Middlesbrough).

THIRD CLASS.

(In alphabetical order).

Vivian Owen Adey (Mr. John Daniel Adey, of Newport, Monmouthshire).

Thomas Alker (Mr. William Henry Tyrer, O.B.E., LL.B., of Wigan).

Newton Beare (Mr. Francis James Ridler, LL.B. (deceased), and Mr. William Charles Henry Cross, LL.B., both of the firm of Messrs. Benson, Carpenter, Cross & Williams, of Bristol).

Leslie Joseph Biddle, LL.B. Birmingham (Mr. Cornelius Hale Saunders, of the firm of Messrs. Saunders, Bradbury and Breakwell, of Birmingham).

Wilfred Edward Corney, B.A. Wales (Mr. Frank Reginald James, of the firm of Messrs. Gwynne James & Son, of Hereford; and Messrs. Taylor & Humbert, of London).

Robert Basil Crust (Mr. John Clarke Gait, of the firm of Messrs. Biddle, Thorne, Welsford & Gait, of London).

George Frederick Folley (Mr. Hugh De Bock Porter, LL.B., of London).

Sydney George Gordon Humphreys (Mr. Thomas Atkinson Higson, M.A., of the firm of Messrs. Swire & Higson, of Manchester; and Messrs. Henry Charlesworth Needham, of the firms of Messrs. Francis White & Needham, and Messrs. Richard Cartwright, both of London).

Frederick William Jefferies (Mr. Merton Addlestone Jones, of the firm of Messrs. Merton Jones & Lewsey, of London).

Kenneth Jones (Mr. John Ernest Hallmark, of the firm of Messrs. Henderson & Hallmark, of Llandudno).

Simon Bernard Levin (Mr. Sydney Walter Price, LL.B., of Liverpool).

Aubrey Keith Alwyn Loadsman (Mr. John Geddes Hunter Cockburn, of the firm of Messrs. Cockburn, Gostling & Co., of Hove).

Frank Lyons Moss, B.A. Oxon (formerly a barrister).

Percy Nickson, M.A. Oxon. (formerly a barrister).

Denis Nixon (Mr. Philip Henry Monk, of the firm of Messrs. Jacksons & Monk, of Middlesbrough).

Neville Christopher O'Brien (Mr. Dudley Frank Hart, of the firm of Messrs. Lawson, Coppack & Hart, of Manchester).

Samuel Sebba, LL.B. London (Mr. Stanley Howard Eldred Crane, of the firm of Messrs. Engall & Crane, of London).

George Cuthbert Sedgwick Stuart (Mr. John Stephen Sedgwick, M.A., LL.M., of Norwich).

John Arnold Trevenen (Mr. William Henry Allen Thorne, of the firm of Messrs. Newbery & Thorne, of Minehead; and Mr. Leonard Nevill, of the firm of Messrs. Sewell, Edwards and Nevill, of London).

The Council of The Law Society have accordingly given a Class Certificate and awarded the following prizes:—

To Mr. Buchanan—The Clement's Inn Prize, value about £42.

To Mr. Bate—The Daniel Reardon Prize, value about £21.

The Council have given Class Certificates to the Candidates in the Second and Third Classes.

Eighty-three candidates gave notice for examination.

Gray's Inn.

GRAND DAY.

Friday, the 27th of April, being Grand Day of Easter Term, at Gray's Inn, the treasurer (Master R. E. Dummett), and the Masters of the Bench entertained at dinner the following guests:—

The Right Hon. Earl Spencer, The Right Hon. Sir Edward Clarke, K.C., The Lord Chief Justice of England (The Right Hon. Lord Hewart), The Hon. Mr. Justice Salter, The Hon. Mr. Justice Roche, Sir Ernest Rutherford, O.M., F.R.S., Sir Duncan Kerly, K.C., Lieut.-Col. Sir Vivian Henderson, M.C., M.P., The Master of Clare College, Cambridge (Dr. W. L. Mollison), The President of the Royal Institute of British Architects (Mr. Walter Tapper), Mr. Frederick Mead.

The Benchers present in addition to the Treasurer were:—

The Right Hon. Sir Plunket Barton, Bart., K.C., Mr. Herbert F. Manisty, K.C., Mr. Arthur E. Gill, Sir Montagu Sharpe, K.C., Sir Alexander Wood Renton, K.C.M.G., K.C., The Hon. Sir Cecil Walsh, The Right Hon. Sir Hamar Greenwood, Bart., K.C., M.P., The Hon. Vice-Chancellor Courthope Wilson, K.C., Sir Walter Greaves-Lord, K.C., M.P., Mr. G. D. Keogh, Mr. Bernard Campion, K.C., Mr. J. W. Ross-Brown, K.C., Mr. James Whitehead, K.C., Mr. R. Storry Deans, M.P., Mr. A. Andrewes Uthwatt, Mr. Malcolm Hilbery, K.C., with the Under-Treasurer (Mr. D. W. Douthwaite).

United Law Society.

A meeting of the Society was held in the Middle Temple Common Room, on Monday, the 19th March, 1928, Mr. F. W. Yates in the chair. Mr. Raymond Oliver opened: "That this House deplores the passing of the Trades Disputes and Trade Unions Act 1927." The Hon. Dougall Meston opposed. There also spoke Messrs. Ross, Shanly, Buller, Pearce, Bell, Tebbutt and Galbraith. The Hon. Opener having replied, the motion was put to the house and lost by eight votes.

A Joint Debate with the Ladies Lyceum Club was held in the Middle Temple Common Room on Monday, the 26th March, 1928, Mr. F. W. Yates in the chair. Mrs. Holford Hewitt opened: "That men and women never understand each other." Mr. J. MacMillan opposed. Miss Hicks Bolton and Mr. L. Stamp seconded the proposition and opposition respectively. There also spoke the following members of the Ladies Lyceum Club, viz., Mlle. de Holthoir, Miss Smith and Miss Waterhouse, and the followng members of the United Law Society, viz., Messrs. Guedalla, Tebutt, Sweeney, Pitt, Galbraith, Bell, S. E. Redfern and Morris. The Hon. Opener and opposer having replied for their respective sides, the motion was put to the house and lost by six votes.

Law Students' Debating Society.

At a meeting of the Society held at The Law Society's Hall, on Tuesday, the 1st inst. (chairman, Mr. J. W. Morris), the subject for debate was "That in the opinion of this House no useful purpose would be served by accepting the Peace Treaty proposed in draft by the President of the United States." Mr. J. H. G. Buller opened in the affirmative. Mr. H. M. Pratt opened in the negative. The following members also spoke: Messrs. G. A. Thesiger, E. F. Iwi, H. Malone, R. D. C. Graham and R. S. W. Pollard. The opener having replied, the motion was lost by two votes. There were nineteen members and three visitors present.

Law Association.

The usual monthly meeting of the directors was held at The Law Society's Hall on Wednesday, the 2nd inst., Mr. J. D. Arthur in the chair. The other directors present were: Mr. E. B. V. Christian, Mr. C. F. Leighton, Mr. P. E. Marshall, Mr. J. R. H. Molony, Mr. John Venning, Mr. W. Winterbotham, and the secretary, Mr. E. E. Barron. A sum of £68 was voted in relief of deserving applicants; three new members were elected, and other general business transacted. The annual General Court was fixed to be held at The Law Society's Hall, on Thursday, the 31st inst., at 2 o'clock.

Legal Notes and News.

Honours and Appointments.

The Minister of Health has appointed Mr. A. B. MACLACHLAN to be a Principal Assistant Secretary, and Mr. M. HESELTINE, C.B., to be an Assistant Secretary of the Ministry.

The Right Hon. WILLIAM WATSON, K.C., M.P., The Lord Advocate, has been elected an Honorary Master of the Bench of Gray's Inn.

Mr. WILLIAM THOMAS LAURENCE, K.C., has been elected a Bencher of the Middle Temple. Mr. Laurence was called in 1895 and took silk in 1920.

Mr. HERBERT J. E. PRICE, solicitor, Haverfordwest and Milford Haven, the Pembrokeshire Coroner, has been elected President of the Coroners' Society of England and Wales for the ensuing year. Mr. DANFORD THOMAS, Deputy Coroner for the City of London, has been appointed Senior Vice-President and Mr. ERNEST HADOW, the Coroner for Warwickshire, a Vice-President. Mr. WALTER SCHROEDER has been re-appointed Hon. Secretary.

The Council of Legal Education has appointed Mr. S. WILBERFORCE, I.C.S. retired, formerly Puisne Judge, Supreme Court of Punjab, to be Examiner in Hindu and Mohammedan Law at the Inns of Court.

The Secretary of State for Scotland has appointed Mr. MATTHEW G. FISHER, Advocate, to be Junior Counsel to the Secretary of State under the Private Legislation Procedure (Scotland) Act, 1899, as from 1st October next, to fill the vacancy caused by the resignation of Mr. Charles Milne, Advocate, which takes effect on that date.

The Freedom of the Borough of Evesham has been conferred on Mr. Alderman GEOFFREY NEW, solicitor, in recognition of his thirty-seven years as Councillor, Alderman and Mayor. Alderman New is the senior member of the firm of New and Saunders, solicitors, of Evesham Broadway and Chipping Campden, and was admitted in 1880.

Mons. FREDERICK ALLEMES has been officially appointed Legal Adviser to the French Embassy in London, in succession to his former partner Mons. M. de Gorostarzu, now retired. Mons. Allemes is a French "Avocat," sworn before the Court of Appeal of Douai, and a graduate of the University of Lille; he is also lecturer on the French Code Civil at the London School of Economics (University of London). The appointment does not involve Mons. Allemes's retirement from the practice which he has carried on at 171, Strand, for the last eight years.

The attention of the Legal Profession is called to the fact that THE PHŒNIX ASSURANCE COMPANY LTD., Phœnix House, King William Street, London, E.C.4 (transacting ALL CLASSES OF INSURANCE BUSINESS), invites proposals for Fidelity Guarantee and Court Bonds, Loans on Reversions and Life Interests. Branch Offices at Byron House, 7, St. James's Street, S.W.1; 187, Fleet Street, E.C.4; 20-22 Lincoln's Inn Fields, W.C.2; and throughout the country.

Professional Partnerships Dissolved.

HERBERT THORNTON PULLAN, REGINALD CHARLES DAVIES and JOHN BURROWS, solicitors, Leeds (Pullan, Davies and Burrows), as from 30th March, by the retirement of J. Burrows. H. T. Pullan and R. C. Davies will continue the practice at same address under the style of Pullan, Davies & Co. J. Burrows will practise in Leeds on his own account.

BARRISTERS AND THE "LOCAL" BAR.

Lord Birkenhead has contributed to the Easter number of *Graya*, the Gray's Inn magazine, an article on "The Local Bar."

Discussing the advantages and disadvantages of the local Bar in relation to the alternative open to young barristers of beginning their practice in London, he states that one may make great errors of calculation if one goes to a powerful provincial centre with the belief that the competition there will not be very serious. When he was called to the Bar and determined to practise locally at Liverpool, where he and his family had many friends, he found there, to his great discomfiture, a collection of juniors who were in no degree inferior to the best men then practising in London. Among them were Mr. Justice Horridge, Lord Justice Greer, Mr. Justice Swift, Sir Leslie Scott, K.C., Mr. Collingwood Hope, K.C., and the late Mr. A. G. Steel, K.C., and in addition, fourteen men who were destined to become either county court judges or metropolitan magistrates. Further, the Liverpool Bar was in constant competition with the Manchester Bar, where the present Lord Chief Justice and many other brilliant men were practising.

In beginning a career in the provinces, a barrister is committed not to one great and inevitable risk, that of taking silk, but to another great and unavoidable risk, which must at some time or other be faced—namely, the necessity of giving up local chambers and coming to London as a junior. Every practitioner at a local Bar, therefore, must face two very formidable fences instead of one. While the distinguished legal and judicial careers of his contemporaries at Liverpool made it plain that the disadvantages of beginning practice in the provinces might easily be surmounted, still, if he were advising a young man of capacity and industry, who had no friends in any provincial centre, and who could insinuate himself into busy chambers in London, he would, on the whole, recommend him to do so.

The magazine also contains an article by Sir Plunket Barton, K.C., on "A Group of Elizabethan Portraits at Gray's Inn."

THE LATE MASTER TERRELL, K.C.

A Memorial Service for the late Mr. Thomas Terrell, K.C., a Master of the Bench of Gray's Inn, was held in the Society's Chapel on Thursday afternoon, the 3rd inst. The Rev. R. V. G. Tasker, M.A., the acting Chaplain, officiated, the lesson being read by the Treasurer (Mr. R. E. Dummett). The relatives present were Mrs. Terrell (widow), Mr. Thomas Terrell, Mr. Edward Terrell and Mr. Robert Terrell (sons), Miss Terrell and Miss Irene Terrell (daughters), Mrs. Patten (sister), Mr. George Terrell (brother), and Mrs. George Terrell, Mr. Glyn Terrell (nephew), and Mrs. Glyn Terrell, Mr. Reginald Terrell (nephew), Mrs. Hardy (sister-in-law), Mr. M. Hardy, and Mr. J. G. Hardy (nephews). The congregation included Sir Duncan Kerly, K.C., and Sir Arthur Colefax, K.B.E., K.C. The Masters of the Bench present in addition to the Treasurer were Sir Miles Mattinson, K.C., The Right Hon. Sir Plunket Barton, Bart., K.C., The Right Hon. Lord Merrivale, Mr. Herbert F. Manisty, K.C., Mr. Edward Clayton, K.C., Mr. W. J. R. Pochin, Sir Montagu Sharpe, K.C., The Right Hon. Lord Justice Greer, Mr. W. Clarke Hall, The Right Hon. Sir Hamar Greenwood, Bart., K.C., M.P., Sir Walter Greaves-Lord, K.C., M.P., Mr. G. D. Keogh, Mr. Bernard Campion, K.C., Mr. J. W. Ross-Brown, K.C., Mr. James Whitehead, K.C., Mr. Frederick Hinde, Mr. R. Storry Deans, M.P., and Mr. A. Andrewes Uthwatt.

ESTATE DUTY IN THE FEDERATED MALAY STATES.

A Bill about to be introduced in the Federal Council seeks to separate estate duty from stamp duties generally and federalises the existing State laws. The changes in detail are either importations from the Finance Act, 1894, or suggestions from the legislation of Ceylon and of Hong Kong or from local experience. The only new item of taxation is imposed on shares of companies incorporated abroad. On the other hand, the number of exceptions is materially increased. Certain annuities and gifts of property of national or scientific value are no longer liable to estate duty. Substantial relief is given in respect of quick succession, and double taxation is avoided by deduction of duty paid elsewhere. Special facilities are provided for obtaining representation of small estates.

LIABILITY FOR SERVANT'S MISTAKES.

A moot was held in Gray's Inn Hall on Monday, the 30th ult., at which Sir Henry Maddocks, K.C., presided. There were also present the Master of the Moots (Sir Plunket Barton, K.C.) and Masters Manisty, K.C., Walsh, K.C., Bernard Campion, K.C., and Hinde.

The following case was argued: The defendant, a builder, employed B as a watchman of premises in course of erection. The plaintiff, a boy of 14 years of age, was going home along a public footpath which ran within fifteen yards of, and was not fenced off from, the said premises. B rushed out of the premises and struck the plaintiff a severe blow, causing serious injury. The plaintiff sued the defendant for damages for assault. The plaintiff gave evidence that he had not been upon and had no intention of going upon the said premises, and that he had not then nor at any previous time annoyed B. The defendant gave evidence that B was employed as a watchman only and that his authority was limited to guarding the building materials on the premises. No other evidence was called on either side. The jury found for the plaintiff. The defendant submitted that there was no evidence upon which the jury could so find. The judge entered judgment for the plaintiff. The defendant appeals.

Mr. D. Karmel and Mr. C. E. S. Perera appeared for the appellants; Mr. G. C. Jennings and Mr. J. A. Wharton for the respondents.

Sir Henry Maddocks, in giving judgment, said that if there was any evidence to be left to the jury from which an inference might be drawn that the watchman was acting within the course of his employment, then the judgment must stand. There was no evidence to show that the watchman was actuated by improper motives in striking the boy. There was evidence on which the jury might infer that the watchman was acting for his master's benefit in the course of his employment. In doing so the watchman had made a mistake, but the master was liable for the mistakes of a servant committed in the course of his employment.

The appeal would be dismissed with costs.

RELIEF FROM RATES.

The Minister of Health received a deputation on Thursday, the 3rd inst., from the National Union of Manufacturers. The deputation consisted of George Terrell, Esq. (President of the Union), Sir John Corcoran, K.B.E., C.B. (Director of the Union), G. R. Hall-Caine, Esq., C.B.E., M.P., Captain C. W. Jacob, Frank P. Dorizzi, Esq., L. N. Ledingham, Esq., J.P., Wm. H. Flanagan, Esq., J.P. (Chairman of the Manchester Branch of the Union), Major Isidore Salmon, C.B.E., J.P., M.P., Gordon T. Harwood Stamper, Esq., R. S. Wright, Esq., M.I.E.E., W. T. R. Beckett, Esq.

The deputation emphasised the burden of high rates and enquired whether the Minister would give them any information as to the rating proposals outlined in the Budget. In the course of a long discussion the Minister explained that it was the Government's intention to relieve productive premises of three-quarters of the rates levied upon them. The definition of productivity was a matter to be laid down in a Bill which would be introduced shortly in the House of Commons. The proposals would necessitate changes in local government, and Mr. Chamberlain said that a memorandum would be issued in the course of a few weeks explaining the Government's intentions in this respect.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.	Emergency Rota.	Appeal Court No. 1.	Mr. Justice Eve.	Mr. Justice Russell.
Monday May 14	Mr. More	Mr. Jolly	Mr. Synge	Mr. Ritchie
Tuesday .. 15	Ritchie	Hicks Beach	Jolly	*Synge
Wednesday 16	Bloxam	Synge	Ritchie	*Jolly
Thursday . 17	Jolly	More	Synge	*Ritchie
Friday 18	Hicks Beach	Ritchie	Jolly	*Synge
Saturday .. 19	Synge	Bloxam	Ritchie	Jolly
	Mr. Justice Romer.	Mr. Justice Astbury.	Mr. Justice Tomlin.	Mr. Justice Clauson.
Monday May 14	Mr. Jolly	Mr. Bloxam	Mr.*More	Mr. Hicks Beach
Tuesday .. 15	*Ritchie	More	Hicks Beach	*Bloxam
Wednesday 16	Synge	Hicks Beach	*Bloxam	*More
Thursday . 17	*Jolly	Bloxam	More	*Hicks Beach
Friday 18	Ritchie	More	*Hicks Beach	Bloxam
Saturday .. 19	Synge	Hicks Beach	Bloxam	More

*The Registrar will be in Chambers on these days, and also on the days when the Courts are not sitting.

VALUATIONS FOR INSURANCE.—It is very essential that all Policy Holders should have a detailed valuation of their effects. Property is generally very inadequately insured, and in case of loss insurers suffer accordingly. **DEBENHAM STORR & SONS (LIMITED)**, 26, King Street, Covent Garden, W.C.2, the well-known chattel valuers and auctioneers (established over 100 years), have a staff of expert valuers, and will be glad to advise those desiring valuations for any purpose. Jewels, plate, furs, furniture, works of art, bric-a-brac a speciality.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 4½%. Next London Stock Exchange Settlement Thursday, 24th May, 1928.

	Middle Price 9th May	Interest Yield.			Yield with Redemption.		
English Government Securities.		£	s.	d.	£	s.	d.
Consols 4% 1957 or after	87⅞	4	11	6	—		
Consols 2½%	56½	4	8	6	—		
War Loan 5% 1929-47	100⅞	4	18	9	4	18	9
War Loan 4½% 1925-45	97xd	4	13	0	4	16	6
War Loan 4% (Tax free) 1929-42	100¼	4	0	0	4	0	0
Funding 4% Loan 1960-1990	90½	4	8	6	4	14	0
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years	93¼	4	6	0	4	7	0
Conversion 4½% Loan 1940-44	99	4	11	0	4	16	0
Conversion 3½% Loan 1961	77¾	4	10	0	—		
Local Loans 3% Stock 1921 or after	65½	4	12	0	—		
Bank Stock	264	4	11	0	—		
India 4½% 1950-55	92½	4	17	0	5	0	0
India 3½%	72	4	17	6	—		
India 3%	62	4	17	6	—		
Sudan 4½% 1939-73	96	4	14	0	4	17	0
Sudan 4% 1974	84	4	15	6	4	17	0
Transvaal Government 3% 1923-53 (Guaranteed by British Government, Estimated life 19 years)	84	3	13	0	4	6	0
Colonial Securities.							
Canada 3% 1938	86	3	12	0	4	18	0
Cape of Good Hope 4% 1916-36	93	4	6	0	5	0	6
Cape of Good Hope 3½% 1929-49	82	4	6	0	5	0	0
Commonwealth of Australia 5% 1945-75	100	5	0	0	5	2	6
Gold Coast 4½% 1956	94	4	15	6	4	17	6
Jamaica 4½% 1941-71	93	4	16	0	4	18	6
Natal 4% 1937	93	4	5	0	5	0	0
New South Wales 4½% 1935-45	91	4	19	0	5	7	0
New South Wales 5% 1945-65	98	5	2	0	5	3	0
New Zealand 4½% 1945	97	4	13	0	4	17	6
New Zealand 5% 1946	104	4	16	6	4	16	6
Queensland 5% 1940-60	98	5	2	0	5	3	0
South Africa 5% 1945-75	104	4	16	0	5	0	0
South Australia 5% 1945-75	99	5	1	0	5	0	0
Tasmania 5% 1945-75	101	4	19	0	5	0	0
Victoria 5% 1945-75	99	5	1	0	5	0	0
West Australia 5% 1945-75	99	5	1	0	5	2	0
Corporation Stocks.							
Birmingham 3% on or after 1947 or at option of Corporation	65	4	12	6	—		
Birmingham 5% 1946–56	104	4	16	6	4	17	7
Cardiff 5% 1945–65	102	4	18	0	4	18	0
Croydon 3% 1940–60	71	4	5	6	5	0	0
Hull 3½% 1925–55	78	4	10	0	5	0	0
Liverpool 3½% Redeemable at option of Corporation	75	4	13	6	5	0	0
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	54½	4	11	0	—		
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	65xd	4	12	6	—		
Manchester 3% on or after 1941	64	4	13	6	—		
Metropolitan Water Board 3% 'A' 1963–2003	65	4	13	0	4	17	0
Metropolitan Water Board 3% 'B' 1934–2003	66½	4	11	0	4	15	6
Middlesex C. C. 3½% 1927–47	84	4	3	6	4	17	0
Newcastle 3½% Irredeemable	73	4	16	0	—		
Nottingham 3% Irredeemable	64	4	15	6	—		
Stockton 5% 1946–66	102	4	18	6	4	19	0
Wolverhampton 5% 1946–56	102	4	18	0	5	0	0
English Railway Prior Charges.							
Gt. Western Rly. 4% Debenture	86	4	13	0	—		
Gt. Western Rly. 5% Rent Charge	104	4	16	6	—		
Gt. Western Rly. 5% Preference	100	5	0	0	—		
L. & N. E. Rly. 4% Debenture	82½	4	17	0	—		
L. & N. E. Rly. 4% Guaranteed	77½	5	3	0	—		
L. & N. E. Rly 4% 1st Preference	68	5	17	6	—		
L. Mid. & Scot. Rly. 4% Debenture	84¼	4	15	0	—		
L. Mid. & Scot. Rly. 4% Guaranteed	83	4	16	6	—		
L. Mid. & Scot. Rly. 4% Preference	77¼	5	3	0	—		
Southern Railway 4% Debenture	84½	4	15	0	—		
Southern Railway 5% Guaranteed	101½	4	18	6	—		
Southern Railway 5% Preference	95	5	5	0	—		

Continued from page xiv.

SOLICITOR (over 8 years' experience) available as assistant, all conveyancing and company and general work (no advocacy), some common law experience; useful draftsman.—Write Box 888, Reynell's, 44, Chancery-lane, W.C.2.

ELDERLY Solicitor, University man, desires light position in good office. Common Law, Chancery. Conveyancing (especially trust), entirely without supervision if required.—"P.Q.," Box 294, Solicitors' Journal, 29 Breams-buildings, E.C.4.

SOLICITOR (BA. Cantab. and Honours), desires engagement. Conveyancing, Common Law or Chancery, without supervision.—"K.L." Box 414, Solicitors' Journal, 29 Breams-buildings, E.C.4.

SOLICITOR, young, energetic and capable, requires post London; good experience; willing undertake advocacy, if required; salary by arrangement; temporary engagement might be considered.—"G.," Box 410, Solicitors' Journal, 29, Breams-buildings, E.C.4.

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PRACTISING Solicitor would consider appointment as assistant where proper facilities would be given for the conduct of his own practice on terms. Experience mostly conveyancing and High Court litigation, some advocacy. London only.—Write "M.," Box 353, Solicitors' Journal, 29, Breams-buildings, E.C.4.

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EX-OFFICERS AND OTHER RANKS.

THE Proprietors of The Solicitors' Journal have placed this space at the disposal of THE BRITISH LEGION, OFFICERS' ASSOCIATION, EMPLOYMENT BUREAU, 3-4, Clement's Inn, Strand, London, W.C.2 (Telephone: Holborn 5769), to whom all replies should be addressed, quoting number of advertisement, date of insertion, and the name of this paper.

REQUIRED, wharf manager's berth, by an ex-R.N.R. officer; experienced in all transport work, loading and discharging of cargo, etc., or similar berth. 7186

PRIVATE secretaryship, or any administrative post required by ex-regular Captain, aged 38. Excellent correspondent; accustomed to responsibility and initiative. Conscientious worker. Can drive car. Excellent references. Unable do outdoor work owing leg wound. Dis. 199

EX-CAPTAIN (married, 38) requires occupation (part or whole time); experience in school teaching, welfare work, church work, club work; good organiser; book-keeping and other secretarial duties. Dis. 185

POSITION required as farm or estate manager. Married; age 40; public school. Thorough working knowledge all classes land, breeding and showing pedigree and commercial dairy cattle and sheep. Also blood stock. Good horseman. Drive any car. Highest references. 4422

SCOTCH Chartered Accountant, Ex-Captain, age 38, has held position of secretary and commercial manager in manufacturing company; first-class references. Would consider any proposition with prospects. Accustomed control staff; reliable hard worker. 9180

FARM Manager (married, age 31) disengaged through farm being sold; understands all branches arable farming and management of stock. Excellent farm mechanic, including tractors. Charge of accounts if necessary. 8445

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